110-174

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1143.

CONSTANCE C. REDFIELD AND FRANK B. REDFIELD, EXECUTRIX AND EXECUTOR OF HEMAN J. REDFIELD, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

THE YSTALYFERA IRON COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**FILED OCTOBER 13, 1883.**

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the Ystalyfera Iron Company, plaintiff, and Constance C. Redfield and Frank B. Redfield, executors, &c., defendants, a manifest error hath happened to the great damage of the said Constance C. Redfield and Frank B. Redfield, executors, &c., as is said and as by their complaint appear': We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-three, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the third day of October, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

The foregoing writ is hereby allowed.

ADDISON BROWN.

2 UNITED STATES OF AMERICA,
*Southern District of New York:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages numbered from three to ninety, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Constance C. Redfield and Frank B. Redfield, executors, &c., of Heman J. Redfield, deceased, plaintiffs in error, against the Ystalyfera Iron Company, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of October, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

(Indorsed:) Exa: A—426. U. S. Supreme Court. Constance C. Redfield & Frank B. Redfield, executors, &c., plaintiffs in error, against The Ystalyfera Iron Company, defendant in error. Writ of error.

Due service of a copy of the within writ of error is hereby admitted this 3rd of October, 1883.

ALMON W. GRISWOLD,
*Pl'ffs' Att'y.*

A. H.

(Stamped:) U. S. circuit court. Filed Oct. 3, 1883. Timothy Griffith, clerk.

3 *Complaint for moneys due.*

Supreme court, New York.

THE YSTALYFERA IRON COMPANY
*against*
HEMAN J. REDFIELD, COLLECTOR OF THE customs of the United States at the port of New York.

The complaint of the above-named plaintiffs respectfully shows to the court here that the defendant aforesaid is indebted to the plaintiffs for divers sums of money by the defendant exacted from the plaintiffs unlawfully, by compulsion, force, and duress, under color of the office of the defendant, of collector of the customs of the United States at the district and port of New York, under the name of duties, and against the remonstrances, resistance, and protestations of the plaintiffs, made to the defendant before and at the time of said exactions, that is to say, on the merchandise imported at the port of New York aforesaid, about the times and in the vessels following, to wit:

The sum of fifteen hundred dollars exacted in excess illegally on an importation of tin and terne plates owned and manufactured by the plaintiffs and imported into the U. States by the "Siddons," said excess having been exacted about the eleventh day of December, eighteen hundred and fifty-four.

4 And the plaintiffs also show to the court here that the right to recover back from the defendant the said moneys so unlawfully exacted was, before and at the time of the payment thereof, expressly reserved by the objections and protests made by the plaintiffs, in due form of law, whereby the defendant was notified that he would be held personally liable to the plaintiffs, by process of law, for the return of said moneys, with the damages thereby sustained, and of the plaintiffs' reasons of protest.

Wherefore the plaintiffs pray judgment of the court here against the defendant for said moneys so illegally exacted and damages thereon, amounting in the whole, with interest, to a large sum of money, to wit, to the sum of three thousand dollars.

JOHN S. M'CULLOH,
*Pl'ffs' Att'y.*

STATE, COUNTY, AND CITY OF NEW YORK, *ss:*

, plaintiff in this action, being duly sworn, says that the foregoing complaint is true of his own knowledge, except as to the

matter stated on information and belief, as to which he believes it to be true.

Sworn and subscribed this day of , 185 , before me.

To Heman J. Redfield, esq., collector of the customs of the United States at the port of New York:

SIR: You are hereby summoned to answer the foregoing complaint, and serve a copy of your answer on me at my office, No. 37 Wall street, within twenty days after the service hereof, exclusive of the day of such service. And if you fail to answer such complaint as required the plaintiffs will take judgment for the sum of three thousand dollars.

JOHN S. M'CULLOH,
*Pl'ff's Att'y, 37 Wall St.*

5 STATE OF NEW YORK,
*County of* :

Personally appeared , who, being sworn, says that he served a copy of the foregoing complaint and summons on said , whom he knows to be the defendant in this action, on the day of , 185 , at the in the city of New York, by delivering such copy to said defendant in person, leaving the same with him; that no copy of answer has been served as required by said summons; and that the disbursements contained in the statement for judgment hereto annexed have been made in this action.

Sworn and subscribed this day of , 185 , before me.

(Endorsed:) No. 200. Supreme Court. The Ystalefera Iron Company against Heman J. Redfield, collector of customs of the U. States at the port of New York. Copy of summons and complaint. 11, 1. John S. M'Culloh, pl'ffs' att'y, No. 37 Wall street. 1855, Jan'y 5th. Rec'd notice of retainer, dated Jan'y 4th, 1855. E. 10. 6.

6 U. S. circuit court.

THE YSTALYFERA IRON COMPANY
*vs.*
CONSTANCE C. REDFIELD AND FRANK B. REDfield, executors, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The above-named plaintiff come here into court, and by S. P. Russell, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 30th day of December, 1854, last past, an action was commenced in the supreme court of the city of New York, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiff, against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said supreme court; that the defendant

afterwards, by his attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards, and on the 10th day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said action was in due form of law removed by writ of certiorari for further prosecution and the trial into this court, according to the act of Congress in such case made and provided; and the clerk of said supreme court did thereupon return the said writ with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

7

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiff' accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 8th day of December, one thousand eight hundred and fifty-four, at the city of New York, in the southern district aforesaid, was indebted to the said plaintiff in the sum of fifteen hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned when the defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of fifteen hundred dollars of lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff, the said defendant, in the consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

8

Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of three thousand ($3,000) dollars, and thereof the plaintiff bring' suit, &c.

S. P. RUSSELL,
*Attorney for Pl'ffs.*

9 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Monday the 15th day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The honorable Judge Hall, circuit judge.

YSTALYFERA IRON CO.
*vs.*
HEMAN J. REDFIELD.

Same jury.

Mr. McCulloh opens the case on part of the plaintiff.

Evidence for the plaintiff:

Frederick Grant, sworn.

James Stokes, affirmed.

Evidence for the defendant:

Moses F. Odell, sworn.

TUESDAY, *December 16th*, 1856.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Judge Betts.

10 YSTALYFERA IRON CO.
*vs.*
HEMAN J. REDFIELD.

This cause being still on trial the jurors are called and severally answer to their names.

Evidence for the defendant:

Wm. Jackson, sworn.
Philip Pritchard, "
James Williamson, "

By direction of the court and consent of counsel the jury find a verdict for the plaintiff in the sum of fifteen hundred dollars, subject to the opinion of the court, upon a case to be made with liberty to either party to turn the same into a bill of exceptions, and subject to adjustment at the custom-house as to the amount, and so they say all.

A copy from the minutes.

A copy.

TIMOTHY GRIFFITH, *Clerk.*
J. W S.

11 U. S. circuit court, southern district of New York.

THE YSTALYFERA IRON COMPANY
*vs.*
HEMAN J. REDFIELD.

On reading and filing the annexed affidavit of Stephen P. Russel, esq., and on motion of Stephen P. Russel, attorney for the plaintiffs, it is—

Ordered that Constance C. Redfield, as executrix, and Frank B. Redfield, as executor of the last will and testament of Heman J. Redfield, deceased, be, and they are hereby, substituted as defendants in the above-entitled action, in place and stead of Heman J. Redfield, deceased.

Dated N. Y., June 9th, 1882.

(Signed) ADDISON BROWN.

A copy.

TIMOTHY GRIFFITH, *Clerk.*
R.

Above order consented to.

STEWART L. WOODFORD,
*U. S. Att'y & Att'y for Def't.*
A. W. GRISWOLD,
*Pl'ff's Counsel.*

NEW YORK, *June 9th*, 1882.

(Endorsed:) U. S. circuit court, south. dist. of New York. The Ystalyfera Iron Co. vs. Heman J. Redfield. Order substituting Redfield's executors as defendants. S. P. Russel, pl'ff's att'y. A. W. Griswold, of counsel.

12 U. S. circuit court, south. dist. of New York.

THE YSTALYFERA IRON CO.
*vs.*
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &c.

Upon reading and filing the notice of motion herein, returnable January 17th, 1883, and the affidavit and papers thereto annexed, and after hearing A. W. Griswold, esq., of counsel for plaintiffs, in support of said motion, and C. B. Clark, esq., ass't U. S. attorney, in opposition thereto, and due deliberation had, it is ordered that the case, of which a copy appears to have been served by the plaintiff's attorney on the U. S. attorney in January, 1857, and now in his possession, be considered as having been then agreed upon and settled between the parties, and that the same be now filed in the office of the clerk of this court as part of the records in this case.

(Signed) N. SHIPMAN, *Judge.*

I see no objection to the form of this.

S. C. B.

A copy.
[L. S.]

TIMOTHY GRIFFITH, *Clerk.*
M. M. K.

(Endorsed:) U. S. circuit court, so. dist. of New York. The Ystalyfera Iron Co. vs. Constance C. Redfield et al., executors, &c. Certified copy. Order to file a "case" served Jan., 1857, as part of the records in this case. Filed in open court January 19, 1883.

13 At a stated term of the circuit court of the United States for the southern district of New York, held at the U. S. court buildings in the city of New York, on the 30th day of April, in the year one thousand eight hundred and eighty-three.

Present, honorable Nathaniel Shipman, judge.

THE YSTALYFERA IRON COMPANY
*vs.*
CONSTANCE C. REDFIELD ET AL., EX'RS, &C.

This cause having been submitted to the court upon the case made and served pursuant to the provisions of the verdict rendered therein December 16th, 1856, and counsel for the respective parties having submitted to the court in writing their briefs and arguments, and due deliberation had thereon, it is ordered that judgment be entered on said verdict for the plaintiff for the sum of seven hundred and fifteen dollars and seventy cents, with interest thereon from December 8th, 1854, together with costs to be taxed.

(Signed) N. SHIPMAN, *Judge.*

A copy.

TIMOTHY GRIFFITH, *Clerk.*

(Endorsed:) U. S. circuit court, so. dist. of New York. The Ystalyfera Iron Company vs. Constance C. Redfield et al., ex'rs, &c. Certified copy. Order for judgment on verdict. S. P. Russel, pl'ff's att'y. A. W. Griswold, of counsel. Original. Filed May 11th, 1883.

14 And the said defendant, by the U. S. district attorney, his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has above thereof declared against him, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court to be tried at a circuit court appointed to be held at the city hall of the city of New York, on the 3rd Monday of October, in the year 1856. And now at this day, to wit, the 16th day of December, 1856, being as yet of the said October term, 1856, before the said justices at the city hall of the said city of New York, came the said parties by their attorneys aforesaid; and the said circuit judge, before whom the said issue was tried, has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place within contained, before N. K. Hall, esq., judge of the circuit court, came, as well the within named plaintiff as the said defendant, by their respective attorneys within mentioned; and the jurors of the jury whereof mention is within made, being summoned, also came, who, to speak the truth in the matters within contained, being chosen, tried, and sworn, upon their oaths do say that the said defendants did undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and they assess the damages of the said plaintiff at the sum of fifteen hundred dollars, but subject to the opinion of the court upon a case to be made. That thereupon a case was made and served, and the cause subsequently submitted
15 to the court upon such case, and on April 30th, 1883, being of the

Ordered that Constance C. Redfield, as executrix, and Frank B. Redfield, as executor of the last will and testament of Heman J. Redfield, deceased, be, and they are hereby, substituted as defendants in the above-entitled action, in place and stead of Heman J. Redfield, deceased.

Dated N. Y., June 9th, 1882.

(Signed) ADDISON BROWN.

A copy.

TIMOTHY GRIFFITH, *Clerk.*
R.

Above order consented to.

STEWART L. WOODFORD,
*U. S. Att'y & Att'y for Def't.*
A. W. GRISWOLD,
*Pl'ff's Counsel.*

NEW YORK, *June 9th*, 1882.

(Endorsed:) U. S. circuit court, south. dist. of New York. The Ystalyfera Iron Co. vs. Heman J. Redfield. Order substituting Redfield's executors as defendants. S. P. Russel, pl'ff's att'y. A. W. Griswold, of counsel.

12 U. S. circuit court, south. dist. of New York.

THE YSTALYFERA IRON CO.
*vs.*
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &c.

Upon reading and filing the notice of motion herein, returnable January 17th, 1883, and the affidavit and papers thereto annexed, and after hearing A. W. Griswold, esq., of counsel for plaintiffs, in support of said motion, and C. B. Clark, esq., ass't U. S. attorney, in opposition thereto, and due deliberation had, it is ordered that the case, of which a copy appears to have been served by the plaintiff's attorney on the U. S. attorney in January, 1857, and now in his possession, be considered as having been then agreed upon and settled between the parties, and that the same be now filed in the office of the clerk of this court as part of the records in this case.

(Signed) N. SHIPMAN, *Judge.*

I see no objection to the form of this.

S. C. B.

A copy.
[L. S.]

TIMOTHY GRIFFITH, *Clerk.*
M. M. K.

(Endorsed:) U. S. circuit court, so. dist. of New York. The Ystalyfera Iron Co. vs. Constance C. Redfield et al., executors, &c. Certified copy. Order to file a "case" served Jan., 1857, as part of the records in this case. Filed in open court January 19, 1883.

13 At a stated term of the circuit court of the United States for the southern district of New York, held at the U. S. court buildings in the city of New York, on the 30th day of April, in the year one thousand eight hundred and eighty-three.

Present, honorable Nathaniel Shipman, judge.

THE YSTALYFERA IRON COMPANY
*vs.*
CONSTANCE C. REDFIELD ET AL., EX'RS, &C.

This cause having been submitted to the court upon the case made and served pursuant to the provisions of the verdict rendered therein December 16th, 1856, and counsel for the respective parties having submitted to the court in writing their briefs and arguments, and due deliberation had thereon, it is ordered that judgment be entered on said verdict for the plaintiff for the sum of seven hundred and fifteen dollars and seventy cents, with interest thereon from December 8th, 1854, together with costs to be taxed.

(Signed) N. SHIPMAN, *Judge.*

A copy.

TIMOTHY GRIFFITH, *Clerk.*

(Endorsed:) U. S. circuit court, so. dist. of New York. The Ystalyfera Iron Company vs. Constance C. Redfield et al., ex'rs, &c. Certified copy. Order for judgment on verdict. S. P. Russel, pl'ff's att'y. A. W. Griswold, of counsel. Original. Filed May 11th, 1883.

14 And the said defendant, by the U. S. district attorney, his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has above thereof declared against him, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court to be tried at a circuit court appointed to be held at the city hall of the city of New York, on the 3rd Monday of October, in the year 1856. And now at this day, to wit, the 16th day of December, 1856, being as yet of the said October term, 1856, before the said justices at the city hall of the said city of New York, came the said parties by their attorneys aforesaid; and the said circuit judge, before whom the said issue was tried, has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place within contained, before N. K. Hall, esq., judge of the circuit court, came, as well the within named plaintiff as the said defendant, by their respective attorneys within mentioned; and the jurors of the jury whereof mention is within made, being summoned, also came, who, to speak the truth in the matters within contained, being chosen, tried, and sworn, upon their oaths do say that the said defendants did undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and they assess the damages of the said plaintiff at the sum of fifteen hundred dollars, but subject to the opinion of the court upon a case to be made. That thereupon a case was made and served, and the cause subsequently submitted
15 to the court upon such case, and on April 30th, 1883, being of the

April term of said court, 1883, after hearing counsel for the respective parties, the said court made and filed an order for judgment for the plaintiffs on said verdict for the sum of seven hundred and fifteen $\frac{70}{100}$ dollars, with interest from December 8th, 1854, amounting together to the sum of two thousand one hundred and twenty-eight dollars and sixteen cents, damages over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges the sum of one hundred and five & $\frac{40}{100}$ dollars.

Therefore, it is considered that the said The Ystalyfera Iron Company, plaintiff, recover against Constance C. Redfield and Frank B. Redfield, executors, &c., defendants, his damages aforesaid in form aforesaid found, and also his costs and charges of increase by the court now here adjudged to the said plaintiffs with his assent, which said damages, costs and charges in the whole amounts to twenty-two hundred and thirty-three dollars and fifty-six cents.

Judg't signed this 22d day of August, 1883.

2,128 16
105 40

$2,233 56

JOHN A. SHIELDS, *Deputy Clerk.*

(Endorsed:) 1224. 380. U. S. circuit court. The Ystalyfera Iron Company vs. Constance C. Redfield & Frank B. Redfield, ex'rs, &c. Judgment roll. S. P. Russel, pl'ff's att'y. H. H. M. U. S. circuit court. Filed August 22d, 1883. Timothy Griffith, clerk.

16 Circuit court U. States, southern district of New York.

THE YSTALEFERA IRON COMPANY *against* HEMAN J. REDFIELD, COLLECTOR OF CUSTOMS. } Case.

This was an action of assumpsit on the money counts brought by the plaintiffs in the supreme court of the State of New York, and removed on application of the defendant as collector of customs into this court by certiorari.

The plaintiffs claimed to recover from the defendant, for excessive duties exacted on nine hundred and forty-three dollars, at thirty per cent. added by the reappraisers, the sum of one hundred and forty-one dollars and forty-five cents, and for penalty on eleven hundred and fifty dollars, under the 17th section of the act of Congress, 1842, at fifty per cent., five hundred and seventy-five dollars, and for interest on excesses of deposits kept back by the collector to enforce payment of the above named excesses and penalty the sum of twenty-two dollars and sixty-seven cents; in all seven hundred and thirty-nine dollars and twelve cents, with interest on said several sums of money from the 8th December, 1853, until the

17 date of trial, 16th December, 1856, being for three years and eight days, one hundred and fifty-six dollars and thirty-two cents, amounting to eight hundred and ninety-five dollars and forty-four cents ($895.44).

And the plaintiffs claimed that the said exactions were illegally made and said sums of money were due because—

1st. The goods were owned by, and imported for the account and risk of the plaintiffs, the manufacturers, and so not subject to the penalty demanded.

2nd. That the importers were not called upon to comply with, and did not refuse to comply with, the provisions of the 17th section of the act of Congress, 1842.

3rd. That the goods were manufactured by the plaintiffs at Swansea, in Wales, a considerable time before they were laden aboard ship at Liverpool, and were invoiced at their value in Wales at the time when manufactured, and that appraisals of prices for the goods at Liverpool alone, and at the time when laden aboard ship, are not sufficient to impose the excesses and penalties demanded.

4th. That the goods were invoiced fairly at their value in Wales, and reappraisals of the price at Liverpool alone are not sufficient in law to impose the excessive duties and penalty demanded.

5th. That the appraisals made in this case were not made as required by sections 16 & 17 of the act of Congress, 1842, because these appraisals were not made with any reference to the prices of the markets in
18 Wales when manufactured, but were made solely with reference to the market of Liverpool in England.

6th. The appraisals were not made with reference to values for cash in the markets of Wales whence exported, but only with reference to the market of Liverpool alone, where last laden aboard ship.

7th. That the valuation of the appraisals was not legally made, because the prices in the markets of Wales and of England was not taken in all the chief markets, to get at the average price for all the markets.

8th. That the appraisals are illegal because they have included as matter of appraisal the freight and port charges from Wales to and at Liverpool, and such charges are not matters of appraisal but are matters of ascertainment only.

9th. That the penalty under the 17th section of the act of Congress, 1842, now demanded, cannot be exacted, because no appraisal such as is directed by section 16 of the act of Congress, 1842, at the prices when procured in the chief markets of the country whence exported, was made.

10th. That the reappraisals are void because each of the reappraisers, Pomery & Stokes, included, in the price they assessed the goods at, the freight and charges to and at Liverpool, which amounted to at least nine pence sterling, and said charges should have been excluded from the price.

11th. That the appraisals were all illegal because the appraisals were all based on quotations of Liverpool prices current, which quota-
19 tions are not the prices at which transactions are made at wholesale, but said quotations are in effect asking prices which sellers would be desirous to make sales.

12th. That the valuation of Mr. Jackson was only on the prices current, quotations at Liverpool, alone, and not sufficent to impose a penalty or excess, having no relation to the prices in the chief markets of the country of manufacture and export.

13th. That the valuations of the reappraisals had reference only to the supposed value of this class of goods in Liverpool, England, alone, and

were not founded on the actual wholesale cash value of these goods in the chief markets of England where manufactured.

14th. That Mr. Pomeroy, the appraiser at large, did not found his valuation on actual sale of this class of goods by the Ystalefera Iron Company, but did in fact found his estimate on the quotations given in prices current for goods of the same denomination but of greater merchantability and better quality.

15th. All the appraisals assumed the quality and value of these goods to be the same as those of similar goods of current merchantable quality, whereas in fact the goods made by the Ystalefera Iron Company were and are well known to be of inferior quality and never command a price equal to that of goods of current grade and quality.

16th. That only one box of each lot of the goods was examined by Jackson, the appraiser, and the appraisers reported said Jackson's valuation without making any appraisal by any of the said principal appraisers.

17th. That only four boxes were ordered by the collector to be examined, and although the appraiser reported that they were thought to be too low invoiced, yet the collector did not order all the goods to be examined or appraised.

18th. That the valuation by G. W. Pomeroy, the general appraiser, was void, because the goods were owned by the manufacturer, and the general appraiser, under the act of 1851, can only act in cases of appeals, under section 17, act 1842, from appraisals of goods that have been actually purchased.

19th. None of the appraisers nor the collector received, called for, or obtained any evidence, letters, or proofs as to the value of these goods, under S. 17, act 1842, although Messrs. Naylor & Co., the consignees, offered to produce all such proofs and papers.

20th. That none of the appraisers or reappraisers or collector did examine all of the goods in the invoice, and therefore there was no appraisal sufficient to impose excess or penalty demanded.

21st. That the reappraiser Stokes was not solicited by the collector, but was selected and nominated by some or one of the United States appraisers.

22d. That the reappraiser Stokes was not legally qualified to act, because he was sworn by a person not authorized to swear him, and because he was not sworn into office by the collector, who alone could administer to him the oath.

23d. That no reference was made in appraising said goods to invoices of the last fiscal year, under act of 10' August, 1846.

24th. That Jackson, the appraiser, only examined one box of each lot of the goods, and reported to the United States appraisers that he supposed the price should be raised 3 shillings sterling per box, less three per cent. discount, and Willis, the appraiser, reported this to the collector. The goods were not then fully examined and appraised by all or any of them personally; that upon the reappraisal only part of the goods were examined by the reappraisers; that G. W. Pomeroy's valuation had reference to the quotations of this class of goods at Liverpool alone, and not to sales of similar goods of the make of the Ystalefera Iron Company; and that James Stokes' valuation had reference only to the values of similar goods, but of better and more merchantable quality.

25th. That the goods were owned by the manufacturers; were fairly invoiced at the price they were worth in Wales when made; were exported from Wales via Liverpool; that the invoice price was not ten per cent. less than the fair value of the goods in the chief markets of Wales and England, exclusive of the charges of transportation from one market to another of Wales and England, and no penalty is due and no excess is due.

26th. That Jackson, the assistant appraiser, did not examine or
22 appraise all of the goods, but only a part; that his valuation was the supposed value only; that the United States appraisers did not, all or any of them, appraise all the goods, but merely reported Jackson's supposed valuation; that the goods were not appraised by one merchant selected by the collector and one merchant selected by the importers, as they should have been by act of 1830, C. 147, sect. 4, May 28th; that the goods were not in fact appraised by the reappraiser Stokes; that Stokes was not sworn into office by the then collector, Greene C. Bronson, who alone had power to swear him into office; that Bronson, the collector, did not, either upon any examination of the goods or on any evidence relative to their value, appraise said goods before he, said Bronson, made his act as umpire between the reappraiser Stokes and the general appraiser, G. W. Pomeroy; that Bronson, the collector, did not estimate or appraise the value of said goods personally, according to the value thereof in actual transactions in the chief markets of Wales & England, nor of either of said countries; that the United States appraisers, the reappraisers, and the collector did not, all or any of them, appraise the goods according to their value in actual transactions at wholesale for cash in the chief markets of Wales and England, nor of either of said countries, but all the alleged valuations were based on quotations given in Liverpool prices current for goods of the same denomination, but of greater merchantability and better quality; that no reference was
23 made by any appraiser or reappraiser, nor by the collector, to invoice of similar goods imported during either the years ending 30' June, 1846, and 30' June, 1853, or in either of said years; that the valuation of the United States appraisers, the reappraisers, and the collector were made without any examination of books, letters, papers, or documents, relative to such imports of said goods, of the importers, or of any other persons, as required by sect. 17, act 1842; and therefore under said facts there was no compliance with the provisions of law sufficient to impose the excessive duties exacted or sufficient in law to impose the penalty demanded and exacted.

27th. That the goods were owned by the manufacturers, and the reappraisal under act of 1851 was not legal, but the goods should have been reappraised according to sect. 4, act 1830, May 28th, with the provisions of which act of 1830 the importers offered to comply, and a reappraisal according to which act of 1830 the importers asked to have granted by the collector, but which was not granted.

28th. That the exactions demanded were illegal, for the reasons above stated; and therefore the excesses of the deposits kept back by the collector to enforce payment of the penalty and excesses should not be retained, and the defendant is bound to pay interest on said excesses so kept back.

The cause came on to be tried at the circuit court of the United States for the second circuit and southern district of New York, held at the City

Hall, in the city of New York, on the 15th day of December,
24 1856, before his honor N. K. Wall, associate justice.

To support the issue on the part of the plaintiffs the plaintiffs produced and gave in evidence the following testimony:

JAMES B. CRAIG, a witness of lawful age, and private secretary of the collector of customs, in obedience to a subpœna duces tecum issued by the plaintiff, produced the original invoice, appraisement, reappraisement, reappraiser's oath, reappraisement reports, entry, amended entry, letters, and protests on file in the custom-house in the words and figures of the annexed schedules, marked A, B, C, D, I, and J.

And further to maintain the issue on their part the plaintiffs called as witnesses—

FREDERICK GRANT, who being sworn according to law, testified: I was custom-house clerk with Naylor and Company at the time of the entry of the goods in question, and I attended to making the entry for Naylor & Co. I made the entry, presented the invoice, and paid the duties. It was sworn to by Mr. O'Conner, one of the firm, and was then taken to the custom-house. The appraiser made his report, adding three shillings sterling per box, less three per cent., on the 12th September, 1853. This Exhibit A is the invoice, and it had, as now, the manufacturer's oath attached, and this Exhibit D is the entry. Without that oath I would not have been allowed to enter the goods. After the appraisers had reported we objected to the charge of three shillings sterling per box, and called for a reap-
25 praisement. Three shillings sterling per box raised it over ten per cent. Mr. Odell ordered a sample box of each brand to the public store, and they were sent up to No. 12 Broad street. On the reappraisement Mr. Jackson reported the same as upon the first appraisement. There were no samples before him when he made the first appraisement, but the samples were before him when he made the second appraisement. The reappraisal took place on the 14th of September, 1853. The reappraisers were James Stokes and G. W. Pomeroy. Mr. Stokes added two shillings sterling all the way through, and Mr. Pomeroy added three shillings sterling all the way through. Two shillings sterling does not raise it over ten per cent., but less than ten per cent., and three shillings sterling raises it over ten per cent. The reappraisal was made free on board at Liverpool by Mr. Pomeroy. The samples sent up were submitted to the appraisers. I do not know that they saw the goods. The samples still remain in the public store. The charges are six pence or nine pence per box to put the goods on board at Liverpool from Swansea, and includes freight. The invoice states the price at Swansea, and the charges are not added on the entry. The oath attached to the invoice states the value at Swansea. We objected to the payment of duties and excess, and requested the collector to sue us for the amount. They declined, and said they would keep back the money deposited. These declarations were made by Mr. O'Dell.

The letters produced are—

26 1st. A notice from the custom-house for us to pay the balance due, dated September 11th, 1854, signed M. F. O'Dell, and received by Naylor & Co. Mr. O'Dell said if we did not pay he would not take our penal bond, and we must pay the amount on our amended entry, which was dated October 1st, 1853. (It is Exhibit E.)

2nd. A letter from Naylor & Co. to H. J. Redfield, dated November 11th, 1854, which was handed to Mr. Redfield or Mr. O'Dell, I think to Mr. Redfield. I now remember handing all these letters to Mr. Redfield, the collector, in person, by your (John S. McCulloh) direction, and Mr. Redfield referred me to Mr. O'Dell. (It is Exhibit F.)

3rd. An answer to the above letter from Mr. O'Dell, dated November 11th, 1834. Mr. King, one of the partners of Naylor & Co., called on Mr. O'Dell, and he said we must pay the excess, and we paid the amount. (It is Exhibit G.)

4th. A letter dated November 28th, 1854, from Naylor & Co., addressed to Mr. Redfield. He (Mr. Redfield) again referred to Mr. O'Dell. (It is Exhibit H.)

5th. Another letter, dated December 4th, 1854, from Naylor & Co. to H. J. Redfield. This was before the payment of duties, and I was referred to Mr. O'Dell, and we had to pay the duties. (It is Exhibit I.)

I handed the protest (Exhibit J) to Mr. O'Dell, and he acknowledged its receipt. This was December 8th, 1854. I presume I handed it to the collector, and was referred to Mr. O'Dell. I handed in $715.70 in gold coin; $140.70 for the additional duty and $575 for the penalty.

27 The protest was filed with Mr. O'Dell. I then went to the cashier's office and paid the $715.70, and got back the excess of deposits running from September 12th to December 11th, 1854. We got back $1,606.35. We claim $22 interest on the $1,606.35. We got the money back and left the sample plates with them. Exhibit L is a list of the deposits kept back.

On being cross-examined he testified:

The samples were never called for or any demand made for them. When the entry was made we gave a penal bond. We simply paid the duties according to the invoice, and got the goods a week or so afterwards. At that time we got a permit for the goods, and the goods themselves by the 1st of October, 1853. Samples were sent from the vessel. The custom-house selected samples as per their order. The balance of the goods went to our store. From September 3d, 1853, to December, 1854, nothing was done with reference to the payment of penalty, &c. We got $1,606.35 back. It was not importers' monies. Mr. King or Mr. O'Conner attended on the reappraisement. Mr. O'Conner is a partner of the firm of Naylor & Co.

JAMES STOKES, being sworn according to law, testified:

I recollect the custom-house papers in this case. I saw them September 13th, 1853, the date of them. I took an oath before Mr. O'Dell. After swearing to it I went to see samples of the goods in the custom-house at 12 Broad street. By the door I examined two or three boxes and made up the valuation as I have reported. I made up the valuation as

28 at Liverpool, from Liverpool circulars comparatively, and that valuation included charges. The difference between Wales and Liverpool was for costs of transportation; values fluctuate weekly. I am engaged in the importation of the article. I have not imported from London. There is less than one shilling a box additional charge at Liverpool than Swansea. I did not refer to the Swansea prices, and I know they are something less than a shilling sterling at Swansea than at Liverpool. The

price I put down I do not think included charges of putting on board ship, and rebated three per cent. for cash on Liverpool value. The usual commission I do not know. The custom-house will not take less than two and a half per cent.

On being cross-examined he testified:

At the appraisement none of the firm of Naylor & Co. were present, but a gentleman was present from their house. I think I was solicited by the house to act. I intended to estimate this price at less than the Liverpool circular at that date, and my estimate was upon the goods. We did not consider these goods as good as those marked "charcoal." There are various qualities of tin and terne plates. Mr. Pomeroy's appraisement is upon the general article, and the same as circular values. My appraisement differs a shilling all through. Mr. Odell was deputy collector at the time. I did not see Mr. Bronson at the time.

On his redirect examination he testified:

I made my valuation on this particular brand and sample, and not having so favorable an opinion of Ystalafera manufactures. I am very
29 little acquainted with the standard of these goods. Its merchantable quality and repute was not considered so good as other brands. Its value in the market at Liverpool compared with other brands was less than others.

On his recross-examination he testified:

I thought a shilling less on tin and terne plates was fair.

Moses F. Odell, being sworn according to law, testified:

A penal redelivery bond was given at the time of the presentation of the invoice after the estimation of duties. Entry clerk first estimates duties. The bond is given before the deputy collector, and naval officer gives permit for delivery of goods. The duties according to the entry were $1,219.95. My duty was deputy collector and special deputy, representing the collector or assistant collector. It was my duty to take charge of appraisal, advance and reappraisal, and continued so until I resigned in October, 1855. Mr. Stokes was sworn in by me September 13th, 1853. The reappraisal was on the 14th September, 1853. Judge Bronson made his report and decision upon that reappraisal. He was in the office September 14th, 1853. He was not in the office September 13, or I would not have sworn Mr. Stokes. There is a circular directing how these appraisements are to be made, and the form of this oath is by the direction of that circular.

On being cross-examined he testified:

At the time of payment of penalty, &c., no demand was made to deliver goods. The samples were not worth $20, or sufficient to warrant
30 a demand. The duties were paid September 5th, 1853, and they got the goods the same day, and responsibility on the bond ended ten days after.

Philip Pritchard, being duly sworn according to law, testified:

I am a general merchant; I receive consignments from abroad. In 1852 and 1853 I was so engaged, and received Ystalafera Iron Company's

tin and terne plates, and bought both in Wales and in Liverpool. The merchantable value of Ystalafera Company's goods in July was one shilling sterling less than other brands, and we were willing to give the price of coke plates. We bought in December, 1852, at that price. It was less value because of uncertain quality; different sheets in the same box differed as to flexibility and brittleness. In buying tin and terne plates at Swansea to be shipped to Liverpool, they can be bought one shilling less at Swansea, for labor and transportation. The chief market is in Wales, that being the principal market of contract deliverable free on board in Wales. The difference between Wales and London is one shilling per box for cost of transportation. The price is the same in London as Liverpool.

On being cross-examined he testified:

As a buyer I would buy at Liverpool, at so much in Wales, and then to pay transportation; but if I bought at Liverpool or London, I would pay those prices and the prices of transportation added. The places of making the contracts are in the large cities, and the manufacture is carried on in small places.

On his redirect examination he testified:

The Welsh establishments and all principal ones have agencies in Liverpool.

31 On his recross-examination he testified:

The printed prices current are generally a little higher than you can purchase for.

JAMES WILLIAMSON, being sworn according to law, testified:

I am acquainted with tin and terne plates of the Ystalafera Iron Company, and was so acquainted in 1852 and 1853. After that time they went out of the market; all out of the market in 1854. The character of the brand as to merchantableness was not so good as fine charcoal plates, being little and not well tinned or terned, not so merchantable as other best brands. I became acquainted with them here. I was then and now a metal broker.

On being cross-examined he testified:

I did not examine the goods in question.

Thereupon, on the part of the defendant, it was admitted that the defendant decided upon the appraisals without examining any of the goods.

To maintain the issue on his part the defendant called as a witness:

WILLIAM JACKSON, who being sworn according to law, testified:—

I was assistant appraiser in the custom-house at New York, from 1849 to 1855. I had before me on the appraisal of these goods the Liverpool circular, and I added three shillings sterling per box, to make Liverpool price at that time, and without examining the goods. On the 12th of September, by the collector's order, I examined the goods, and reported the value on examination, adding three shillings per box, less three per cent.

The goods are called and were termed by the invoice tin and terne
32 plates. I found the samples to correspond with the invoice, and I

took the Liverpool value as the value at the time and place of shipment. I took the value from the circular of that date, or nearest approach to that date. In those prices current the Ystalyfera brands were not quoted at any different price. Those brands were then new and not in the market. I know of no difference between Ystalyfera and other brands.

On being cross-examined he testified:

I had no goods before me at the first appraisal and I took the values from the price current, and at the time I did not know that the goods were Ystalifera brand. The Liverpool prices current state the prices according to marks IC & IX & WIC. These are charged at less price; IX is the best mark. The regular difference between IC & IX is six shillings sterling per box; IXX is still higher. The prices current did not give the brands or show differences in prices in brands. Charcoal plates are one price and coke plates another price; tin plates are one price and terne plates another price; IC is a base of values.

On his redirect examination he testified:

IX is an advance of six shillings, and every X is another six shillings advance.

On his re-cross examination he testified:

I did not know it was a new brand, or inferior to others; I knew it was terne plate because it was so sworn to. On the invoice was depicted a swan and the letter C, with the word anthracite after it. I did not compare any different brands to make up valuation. I examined one
33 box of each of three brands, and one box of terne plates. I valued it as a good article according to price current. Charcoal is a tougher article and is pure tin, and other kinds have lead. Coke is apt to break in bending, and tin will bend short and not break; if the plate is properly dipped it will come out smooth. The samples were smooth and of good quality. I had no reference to Swansea prices to make the value, because I was instructed to go to the value at Liverpool only. Quotations were free on board, and included the charges of shipping & putting on board.

Thereupon the jury rendered a verdict for the plaintiff for $1,500, subject to the opinion of the court on a case to be made, and to adjustment at the custom-house.

JOHN S. McCULLOH,
*Plaintiff's Attorney.*

34 SCHEDULE A.

241.] O.

I, the undersigned, consul of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come that John J. Jenkin, before whom the annexed affidavit of James P. Budd hath been made, is a master extraordinary in chancery, duly authorized to administer oaths and affirmations; that the deponent is in my opinion worthy of credit and qualified to verify the annexed invoice, and that the said affidavit was administered in the presence of the said T. J. Jenkin.

Given from under my hand and seal of office, at Liverpool, this 12th day of August, and year one thousand eight hundred & fifty-three.

[L. S.] NATH'L HAWTHORNE.

35 I, James Palmer Budd, of Ystalyfera, in the parish of Llangwicke, in the county of Glamorgan, iron-master, managing partner for the Ystalyfera Iron Company, of Ystalyfera aforesaid, iron merchants and manufacturers, solemnly, sincerely, and truly swear that they, the said Ystalyfera Iron Company, doing business at the Ystalyfera Iron Works, near Swansea, in the said county of Glamorgan, under the firm of the Ystalyfera Iron Company, are the true and lawful owners of certain goods, wares, or merchandize as specified in the invoice marked "A," subscribed by proper signatures of our establishment, amounting to one thousand six hundred and thirty-nine pounds eight shillings, and here produced to the undersigned, and which have been shipped at Liverpool by Messrs. Naylor, Vickers and Company, of Liverpool, per ship Giddens, for Messrs. Naylor and Company, of New York, in the United States of America; that the said invoice hereunto annexed contains a true and faithful account of the said goods, wares, or merchandize at their fair market value at the time and place when and where the same were manufactured, and of all charges thereon; and that the said invoice contains no discounts, bounties, or drawbacks but such as have been actually allowed.

J. PALMER BUDD.

Sworn at the town of Swansea, in the county of Glamorgan, this eighth day of August, 1853, before me.

JOHN J. JENKINS,
*A Master Extraordinary in Chancery.*

36 YSTALYFERA IRON WORKS,
*Swansea, July* 7, 1853.

Messrs. Naylor, Vickers & Co. bought of Ystalyfera Iron Company:

| | | | |
|---|---|---|---|
| 600 boxes terne plates, 25*s* | | £750 | |
| 333 " I C tin, 26*s* | | 432 | 18 |
| 167 " I X " 32*s* | | 267 | 4 |
| 200 " W I C " 24*s* | | 240 | |
| | | 1,690 | 2 |
| Less 3% | | 50 | 14 |
| | | £1,639 | 8 |

Per the Ystalyfera Iron Co.

J. PALMER BUDD.

A.

This is the invoice marked "A" referred to in the affidavit of James Palmer Budd, of Ystalyfera, in the parish of Llangwicke, in the county of Glamorgan.

Sworn before me this 8th day of August, 1853.

JOHN J. JENKINS,
*A Master Extraordinary in Chancery.*

(On the margin:) Schedule A. Lea anthracite.

37 No mark. One box terne plates.
I C. One box tin plates.
I X. One box do.
W I C. One box do.
} Exam'd.

Add three shillings per box (less 3 per cent.) to make value correct for tin & terne plates. Sept'r 12, '52.

W. JACKSON.
S. J. WILLIS.

Amend, take duty and penalty, as per appt. of gen'l appl., under act 1842.

M. F. ODELL, *D'y.*
G. WEBB.

Sixteen hundred & thirty-nine 8*s.* st'g.
Allow Messrs. com. 2½.

3095 No.

I certify that this invoices is as presented to me in entry.

SIDDONS.

Custom-house, New York, this 29' day of Aug., 1853.
Report value.

C. P. CLINCH.

Send one box each mark.

M. F. O.

G. B.
1,300.

NAYLOR & CO.,
P'r SIDDONS.

Adv'd 12% & 9½%.
Sept. 1st, 1853.

38 SCHEDULE B.

CUSTOM-HOUSE, NEW YORK,
*Collector's Office, Sept.* 13, 1853.

I, the undersigned, appointed by the collector of the district of New York to appraise a lot of tin and terne plates imported by Messrs. Naylor & Co. per from Liverpool, the said importer having requested a new appraisement thereof in accordance with the provisions of the 16th and 17th sections of the act of the 30th of August, 1842, do hereby solemnly affirm diligently and faithfully to examine and inspect said lot of tin and terne plates and truly to report to the best of my knowledge and belief the true value thereof, in accordance with the provisions of the laws of Congress, as construed by the Secretary of the Treasury in the several instructions issued by him in pursuance of the authority vested in the said

Secretary of the Treasury by the 23d and 24th sections of said act of 30th August, 1842, by the act of 30th July, 1846, and the 2d sections of the act 10th August, 1846, & 3d March, 1851.

JAMES STOKES.

Affirmed before me this 13th day of September, 1853.

M. F. ODELL,
*D'y Collector.*

1427
138

11416
4281
2427

277926

39 *Appraiser's report.*

NEW YORK, *Sept. 14th*, 1852.

SIR: We have examined charcoal, tin, & terne plates imported by Naylor & Co. in the ship Siddons from Liverpool, and are of opinion that the actual market value or wholesale price of the said goods at the period of the exportation thereof to the United States in the principal markets of the country from which the same were imported into the United States was, and we do therefore appraise the same as follows:

| Marks. | Numbers. | Description of merchandize. Liverpool prices. | Value. £ | s. | d. |
|---|---|---|---|---|---|
| IC | 600 | Boxes terne charcoal plates, @ 27*s* | 810 | .. | . |
| IC | 333 | Do. tin plates do. @ 28*s* | 466 | 4 | . |
| IX | 167 | Do. do. do. @ 34*s* | 283 | 18 | . |
| WIC | 200 | Do. do. do. @ 26*s* | 260 | .. | . |
| | | Less 3 % discount | 1,820 | 2 | . |
| | | | 54 | 12 | . |
| | | | 1,765 | 10 | . |
| | | Commission 2½ % | 44 | 26 | . |
| | | | 1,809 | 12 | 6 |
| | | JAMES STOKES. | | | |
| IC | 600 | Boxes terne charcoal plates, @ 28 | 840 | .. | . |
| IC | 333 | " tin plates do. @ 29 | 482 | 17 | . |
| IX | 167 | " do. do. @ 35*s* | 292 | 5 | . |
| WIC | 200 | " do. do. @ 27*s* | 270 | .. | . |
| | | | 1,885 | 21 | . |

40 Less 3 pr. ct ..... 56 11

£1,828 11

Com. 2½ % ..... 45 14

On board at Liverpool ..... 1,874 5

Appraisers:

G. W. POMEROY,
*Gen'l Appraiser.*

To the Collector of the Customs of the Port of New York.

The merchant & the general appraiser having disagreed, I decide in favor of the appraisement by the general appraiser, which agrees with the appraisement, by the principal appraisers.

Sept. 14, 1853.

GREENE C. BRONSON,
*Collector.*

41 SCHEDULE C.

CUSTOM-HOUSE, *New York, Oct.* 1, 1853.

*Amendment of an entry of merchandize imported by Naylor & Co. on the ship Siddons, - , master, from Liv'p'l arrived Aug.,* '53.

Original entry on file of vessel:

Amount of duty paid, $1,219.95 on the 3' Sep., 1853.

| | | |
|---|---|---|
| Add as pr. app's, report terne plates | | £193 17 0 |
| Am't for penalty: | | |
| IC. 600 boxes | £840 0 0 | |
| IC. 333 do. | 482 17 0 | |
| WIC. 200 do. | 270 0 0 | |
| | 1,592 17 0 | |
| Off 3 pr. ct | 47 5 | |
| | 1,545 12 0 | |
| Com. 2 % | 38 12 9 | |
| | | £1,584 4 9 |

938—15—$140,70. S. P.

Penalty:—7668, 15—1,150.20.

Penalty: 50 per cent. $575.00. S. P.

SCHEDULE D

42 IMPORT ENTRY.

☞ Importers of dry goods will be required to specify in the column of contents the material of which their goods are made, whether wool, cotton, worsted, silk, &c., or, when of any two or more to specify that which is of chief value.

*Entry of merchandise imported by Naylor & Co., in the ship Siddons, whereof is master, from L'pool. New York, August* 29, 1853.

| Marks. | Nos. | Packages and contents. | 15 per cent |
|---|---|---|---|
| I C | ..... | Six hundred boxes terne plate | £750 0 0 |
| | ..... | Three hundred & thirty-three boxes I C tin plates | 432 18 0 |
| IX | ..... | One hundred & sixty-seven boxes I X tin plates | 267 4 0 |
| W I C | ..... | Two hundred boxes W I C tin plates | 240 0 0 |
| | | | 1,690 2 0 |
| | | Less 3 per cent | 50 14 0 |
| | | | 1,639 8 0 |
| | 8,133—15—$1,219.95 | Commission 2½ per cent | 41 0 0 |
| | | | £1,680 8 0 |
| | P'd. Sept. 3, C. E. G. | Total | $8.133 14 |

W. N. G. W. $1,219.95

NAYLOR & CO.

See amended Entry.

43 DISTRICT AND PORT OF NEW YORK.

*Consignee, importer, or agent's oath.*

I, M. J. O'Conner, do solemnly and truly swear that the invoice and bill of lading now presented by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ship Siddons, whereof is master, from L'pool, for account of any person whomsoever, for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice or of the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district; that I do further solemnly and truly swear that to the best of my knowledge and belief *that* James P. Budd is owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value at L'pool of the said goods, wares, and merchandise, all the charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

M. J. O'CONNER,
*Naval Officer.*

Sworn this 30' day of Aug., 1853, before me.

C. P. CLINCH, *Collector.*
D. C.

(On margin:) Naylor & Co. 1,219.95. Ship Siddons, Sep. 3, '53.

44 *Notice.*

All charges for packages, packing expenses, making up, inland carriage, export duty, commissions, portage, and shipping charges must be put on the entry; and the charges under each rate of duty ad valorem and on each article paying a specific rate of duty must be apportioned by the person making the entry, or it will be returned for correction; also specify the weight or quantity of each article.

45 SCHEDULE E.

T. G.] CUSTOM-HOUSE, NEW YORK,
*Collector's Office, Sept.* 11, 1854.

SIR: Upon an importation of yours per Siddons, from Liverpool, Aug., '53, there is a balance due the United States amounting to $715.70. It is

important that this account should be settled; you will much oblige by giving it your early attention.

The entry you will find at the desk of the chief liquidating clerk.

Respectfully, yours,

M. F. ODELL,
*Deputy Collector.*

Mess. NAYLOR & Co.

(On margin :) A.

46 SCHEDULE F.

NEW YORK, 99 JOHN ST., *Nov.* 11, 1854.

To HERMAN J. REDFIELD, Esq.,
*Collector of Customs :*

SIR: We applied to your office on the 8th Nov. instant for the payment to us of the sum of $1,028.30, being the amount of the excesses of deposits for unascertained duties on several articles of merchandise imported by us and duly entered at the custom-house But the payment of said $1,028.30 was refused to us on the ground as alleged that we should first pay the additional duties and the penalty claimed on our importations of goods by the Siddons, and demanded of us by a letter of Sept. 11, 1854, of which the annexed paper, marked "A," is a copy. We trust that as the said additional and penal demands are not legally due the U. States, and it is not proper nor lawful to retain said $1,028.30, being the excesses of our deposits, nor legal to set off the additional duties and penalty claimed per Siddons against our said excesses of deposits, you will be pleased to order and direct the payment of said $1,028.30 to us.

We are, most respectfully, y'r ob. serv'ts,

NAYLOR & CO.

47 SCHEDULE G.

CUSTOM-HOUSE, NEW YORK,
*Collector's Office, Nov. 11th,* 1854.

SIR: Yours of to-day is at hand. In reply I have only to state that the refusal on the part of the clerks to refund the balances due you until you first paid an am't due upon an entry by the Siddons is in conformity with the established rule of the office and Department at Washington. You can pay the am't claimed under protest, then sue for its recovery; when paid the excess of deposits will be at once settled. If you will call upon me I will further explain.

Yours, truly,

M. F. ODELL,
*Special Deputy Collector.*

NAYLOR & Co.

48 SCHEDULE H.

99 & 101 JOHN STREET, NEW YORK,
28*th November*, 1832.

HEMAN J. REDFIELD, Esq.,
*Collector of Customs:*

SIR: By a note to you bearing date the 11th instant we requested the

payment to us of the sum of $1,028.30, being the amount then due for the liquidated excesses of our deposits for duties, and which were retained to enforce the payment of additional duties and penalty demanded on the goods imported per "Liddons" on the 29th August, 1853, from L'pool, & owned & manufactured by the Ystalyfera Iron Company.

One of our firm, in compliance with the invitation contained in Mr. Odell's reply to our note, called at the custom-house to receive such explanations as might be made, and upon so doing was informed that unless the above demands on ℅ the Liddons goods were paid the bonds of our firm would not be received at the custom-house.

While we are conscious that these demands must be paid by us in order to avoid difficulties as stated, we would assure you that we have no desire in this matter to do more than save, if it be possible, these losses to our consigners, as we are convinced that, in all fairness and justice as between the United States and the owners, the goods should not be subjected to these demands and losses.

And we beg to solicit your favorable consideration of the facts, and that the "tin and terne plates" made by the Ystalyfera Iron Company are known to be of inferior quality and less market value than goods of similar class turned out by other manufacturers; that in fact these goods
49 were invoiced at their wholesale actual value at Swansea in Wales, as stated by the owners' oath attached to the invoice at the time & place when & where so manufactured.

And that the Liverpool prices current, on which the valuations assumed for these goods have been based, do not give the prices at which transactions actually occur, but such prices as may probably or might ordinarily be asked by sellers to make favorable sales, and that if the actual cash transactions at wholesale be averaged on the markets of Wales or of England, or of both of those countries, the average price will not be ten per cent. higher than the invoice per Liddons.

And, besides, we have labored under difficulties in regard to the goods per Liddons; as they were not purchased goods we could not have added to the invoice price on entry, even if we thought the invoice too low (which we did not), and as the goods were imported on ℅, the manufacturers think the courts have in some cases decided that such imports should not & cannot be made to pay duties or penalties on appraisals under the 16th & 17th sect. of the act 1842 (tariff), in the 8th sect. of the 1846 tariff, as these refer to purchaser's goods; and as we asked a reappraisal of these goods, we think a reappraisement under section 9 of the act of 1851, March 3, by general appraisers & one merchant, should not impose on us the penalty demanded.

We ask that you will permit a reconsideration of the valuations of the reappraisals made, and grant in a reappraisement under the 4th section of the act of 28th May, 1830, with which we have always been and now are ready to comply by naming, with your permission, a fair & impartial merchant to act on our part as reappraiser, together
50 with such other as you may name for the U. States; and we are ready to state the reasons in full why we consider the valuations of the appraisals already made too high & to make oath that those valuations are too high & higher than the actual value and proper charges on which the duties should be charged, & higher than the current value of the goods including such charges at the place of *exportation*.

We hope that you will reconsider these matters, & that you may agree with us in thinking that duties and penalty should not be exacted of us on the valuations made under Collector Bronson, as the invoice was perfectly fair, and that such relief as can be allowed may be extended in this matter, in which we feel it due to our correspondents to reserve and save their rights, while at the same time we shall always wish and endeavor to do what on all occasions shall be proper from us as merchants in regard to our importations.

Asking your early consideration of our requests and views, and an early reply,

We are, sir, most respectfully, your obedient serv'ts,

NAYLOR & CO.

51 SC'EDULE I.

NEW YORK, 99 & 101 JOHN STREET,
*Decem'r* 4, 1854.

To HERMAN J. REDFIELD, Esq're,
*Collector of Customs:*

SIR: Renewing our requests that you would be pleased to order the payment to us of the excesses of our deposites for unliquidated duties, which amounted on the 11th ult'o to $1,028.30, and that you would not insist on the payment of the sums demanded on the tin and terne plates imported 29' August, 1853, by the Liddons, we now beg to state the grounds of our objections, and protest against the demands, per the Liddons, on which we shall place our claims on yourself and the United States to have the same refunded, with such damages as may be proper in the event of the illegal exaction:

First. The goods per Liddons were manufactured by the Ystalyfera Iron Company at Swansea, in Glamorganshire, Wales, from whence they were imported for the account and risk of said owners.

Second. They were invoiced by the Ystalyfera Iron Company at the actual fair cash value by wholesale at the time and place when and where manufactured, and were accompanied by the oath of the manufacturers in due form prescribed by law, administered by the proper officers.

Third. The goods were not in fact worth more than stated by the invoice in transactions for cash in the chief markets of Wales and
52 England, and of each of those countries, by wholesale at the time when so invoiced.

Fourth. The actual fair wholesale cash value of these goods at the time when the exportation commenced at Swansea did not exceed the invoice price in the chief markets of Wales and England, and of each of these countries.

Fifth. The actual cash values in the chief markets of Wales, if properly averaged, does not exceed the invoice price at the time of manufacture and at the time of exportation.

Sixth. The actual cash values in the chief markets of England at wholesale, if properly averaged, does not exceed the invoice price at the time of manufactures and of export.

Seventh. The average fair wholesale cash value of the goods per Liddons at the time when manufactured and when exported, in the chief

markets of Wales and England, does not exceed the invoice price by ten per cent., if at all.

Eighth. The fair average wholesale price of the goods per Liddon for cash in the chief markets of England and Wales did not exceed the invoice price by ten per cent., if at all, exclusive of the charges of transporting such goods from one market of countries to another market, and such charges being matters of ascertainment, and not of appraisal, should be excluded from the price of goods abroad.

Ninth. The value at Liverpool of the goods per Liddons at the time of their being laden aboard ship, exclusive of the charges for freight from Swansea and of the port and shipping charges, did not exceed the invoice price by ten per cent., nor indeed at all.

Tenth. The above-stated facts as to the value of the goods per
53 the Liddons are true, although the Liverpool prices current may state prices higher than the invoice per Liddons, because these prices current do not state the rates at which actual cash sales are made at wholesale, but give prices which would be asked to make favorable sales in the foreign markets.

Eleventh. The prices of the invoice per Liddon were fair and true as required by law for the goods shipped, as the tin and terne plates of the make of the Ystalyfera Iron Company are never of as uniform and good a quality as similar goods of other makers, and do not command as good a price as goods of other makers in the markets of England and Wales; and finally, on all and every of the grounds of objection above stated, together or separately, we insist that the true duties on the goods per the Liddons should be taken on the amount found by taking the invoice price as a basis and adding the proper charges to the price, and that we have already paid all that is due upon such an amount; and for the exaction of any further or greater sum we reserve the right to damages against yourself and the Government for account of whom it may concern, and are, sir,

Most respectfully, your ob'd't servt's,

NAYLOR & CO., *Consignees*, &
THE YSTALYFERA COMPANY,
By NAYLOR & CO.

54 SC'EDULE J.

NEW YORK, 99 & 101 JOHN ST., *December 8th*, 1854.

Original served on H. J. Redfield. V. G.

To HEMAN J. REDFIELD, Esq.,
*Collector of Customs:*

SIR: We have carefully examined into the facts relating to the goods per the Liddons, and renewing to you the requests contained in our letter of the 11th and 28th ulto., and the protests therein as well as in our letter of the 4th inst., and beg now further to protest against the exaction of the sums now illegally demanded on the goods of the Ystalyfera Iron Co. imported by the Liddons, on the grounds set forth in our above-mentioned former letter, and without waiving any of the grounds therein taken against said exactions, we now further protest against said exactions and against the appraisals and reappraisals heretofore made as follows:

First. We hereby further protest against all of the exactions in whole in or part because the tin and terne plates imported August 29, '53, were owned and manufactured by the Ystalyfera Iron Co., and were imported for the account & risk of the said manufacturers; therefore the alleged additional duties and penalty do not accrue to the United States, because the 7th sec. act 1842, and 8th sect. 1846, do not, nor does any other law of the United States, impose a penalty such as demanded on goods imported by manufacturers.

Second. The goods by Liddons were owned by the manufacturers,
55 and therefore the 16th or 17th sec. tariff 1842, the 8th sec. tariff 1846, and the 1, 2, & 3d P. act 1851, ch. 38, do not impose the penalty demanded, because those laws only impose penalties on goods that have been actually purchased.

Third. The penalty demanded on the Liddons is claimed under S. 16, and tariff of 1842, but the exaction cannot be legally made, because the penalty of S. 17, act 1842, is only imposed in case the importer, owner, or consignee shall be called upon by the appraisers or collector and shall refuse or neglect when so called upon to comply with the provisions of that 17 S. and no such call or refusal or neglect existed in this case.

And, further, protesting against the legal validity & sufficiency of all and every of the appraisals and reappraisals alleged to have been made in regard to the goods per Liddons, we maintain and protest as follows:

First. And, further, protesting against said exactions, all and every one of them, we aver that said goods were manufactured & owned by the Ystalyfera Iron Co., and were manufactured at Swansea in Glamorganshire, Wales, a considerable time prior to the date when the same were laden aboard ship at Liverpool, and were invoiced by said owners at the fair actual wholesale market value thereof for cash at the time and place when and where the same were manufactured, and therefore the appraisals & reappraisals of said goods alleged to be based on the price of tin and terne plates
56 at the time of being laden aboard ship at Liverpool, and on the market of Liverpool alone, at a higher price or value than the invoice are not in law sufficient to impose said addition of duties nor said penalty.

Second. And, further protesting against all and every part of said demands for addition of duties and penalty, we aver that the said goods were manufactured in Glamorganshire, Wales, and were invoiced at the fair actual wholesale cash value where the same were so manufactured, and appraisals and reappraisals thereof as made at the price of this class of goods in the market of Liverpool alone are not sufficient in law to impose said addition of duties nor said penalty.

Third. And, further protesting against said addition of duties and penalty, and all and every part thereof, we aver that if the provisions of the 16th & 17th S's tariff 1842 are legally applicable to this importation, which we deny, then the appraisal & reappraisal thereunder should find the fair actual wholesale cash value or price of said merchandise at the time of purchase in the principal markets of the country whence imported; and such was not done in this case, but the market value of Liverpool alone was referred to in fixing the price in said appraisal and reappraisal alleged to have been made, and no reference whatever was made in said appraisal & reappraisal to the markets of Wales, in which country the

importation of the said goods commenced, wherefore there is no ground in law sufficient to impose the said increase of duty and penalty.

Fourth. And, further protesting against the exaction of all or
57 any part of the said addition of duties or penalty, we aver that in and by said alleged appraisal & reappraisals the price or value of the goods has not been ascertained and appraised according to the actual wholesale cash sales or prices in the principal markets of Wales, the country whence exported, nor on or according to the said value *or* in the principal markets of England, the country where last laden aboard ship; but, on the contrary, that in assuming a basis for duties the price or value has been assumed illegally with relation to the market of Liverpool alone, the place or port where they were last laden aboard ship; and therefore there is no sufficient ground in law for imposing said addition of duty or penalty.

And, further protesting against the exaction of all or any part of said addition of duty or penalty, we aver that in making the alleged appraisal and reappraisal under the 16th s's act 1842, and 1st S. 1851, C. 30, the price or value that has been fixed by said appraisal and reappraisal was not ascertained or appraised as it should have been by taking the average of the fair wholesale cash prices in the markets of Wales, where the exportation commenced, or in the markets of England, where the goods were last laden aboard ship; therefore there is no sufficient ground in law to impose said addition of duties or said penalty.

Sixth. And, further protesting against the exaction of all or any part of said duties or penalty, we aver that the prices assumed by the al-
58 leged appraisal or reappraisals of said merchandise have included as matter of appraisal the freight and port charges usual at and to Liverpool, which freight and charges are not matters of appraisal, but under the acts of 1842, s's 16, & 1851, ch'r 30, S. 1, are, when ascertained as actual disbursements, to be added to the price appraised in forming dutiable basis. Wherefore the said addition of duties and penalty have no sufficient basis for being imposed upon such appraisal or reappraisals.

Seventh. And, further protesting against all and every part of the said additional duties and penalty, we aver that there has been no appraisal & reappraisal of said goods based on the price of such goods at wholesale for each at the time when manufactured in the country whence imported, and where there has not been such appraisal and reappraisal, there has been no sufficient compliance with those provisions of law under which alone the penalty demanded could be imposed, if at all.

Eighth. And, further protesting against the exaction of all or any part of the said additional duties or penalty, we aver that in finding the alleged price or value of said goods at Liverpool, and as on the market of Liverpool, the re-appraisers, Pomeroy and Stokes, both and each of them, included in their assumed price the transportation and shipping charges to and at Liverpool, which freight and charges amount to at least nine pence sterling on board at Liverpool; the amount of which charges should have been excluded from the appraisals by said appraisers, and excluding which charges the price stated by the reappraisers did not exceed the invoice by ten per cent.

59 Ninth. And, further protesting against the exaction of all or any of the said additional duties or penalty demanded, we aver that in the alleged appraisals and reappraisals of said goods, the ap-

praisers and reappraisers and collector have each and all of them assumed values or prices based on quotations given by Liverpool prices current, and are therefore in error, because such prices current do not give the prices at which actual wholesale cash sales are made from day to day of said class of goods, but such prices current merely state such values or prices as are considered such as would enable merchants in Liverpool to make favorable sales, and which prices, so stated in said prices current, are neither conclusive nor fair statements of the actual wholesale cash value of such goods, and therefore the alleged appraisals and reappraisals are not sufficient to impose such additional duties or penalty.

Tenth. And, further protesting against the exaction of said additional duties and penalty, we aver that the values or prices assumed by the appraiser's clerk, Mr. Jackson, in and by the U. States appraisers, were estimated with reference to what they supposed to be the value of said goods in the market of Liverpool, England, alone, and were not ascertained and based upon the actual wholesale cash values of said merchandise in the chief markets of England at the time of manufacture, and that there is not therefore any appraisal of the United States appraisers sufficient to impose said additional duties or penalty.

Eleventh. And, further protesting against the exaction of said additional duties or penalty, we aver that the values assumed by the
60 merchant appraiser, Stokes, and by the appraiser at large, G. W. Pomeroy, as the price of said goods, were founded upon supposed value of the goods of this class generally in the market of Liverpool, England, alone, and were not founded upon the actual wholesale cash value of these goods in the chief markets of England at the time of manufacture, and therefore the alleged reappraisals of said goods are not, either of them, sufficient in law to impose said additional duties or penalty under the 16th and 17th sec'., tariff 1842.

Twelfth. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that the alleged appraisals and reappraisals of said goods were not both or either of them based on the actual prices at wholesale for cash in the principal markets of England and Wales at the time when manufactured, and therefore the appraisal and reappraisals are not sufficient in law to impose said additional duties or penalty.

Thirteenth. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that the appraiser at large, Geo. W. Pomeroy, in fixing the values assumed in his valuation did not found his estimate on actual sales of such goods by Ystalyfera Iron Company, the manufacturers, but said Pomeroy did in fact found his valuation upon the rates given by prices current for goods of the same description but of greater merchantability and better quality, and therefore the valuation of said Pomeroy is not sufficient to impose such increased duties or penalty.

61 Fourteenth. And, further protesting against the exaction of all or any part of said additional duties and penalty, we aver that the said goods were by the United States appraisers, the reappraisers, and by each and all of them, assumed to be of the quality and value of similar goods of current merchantable quality, whereas the said goods manufact-

ured by said Ystalyfera Iron Company were and are well known to be always of inferior quality, and never do command a price equal to that of goods of current grade or quality, and therefore the said appraisals & reappraisals are not sufficient to impose said additional duties or penalty.

Fifteenth. And, further protesting against the exaction of any part of the additional duties or penalty demanded, we aver that Mr. Jackson, the appraiser's clerk, under S. 21, act 1842, did not inspect or examine more than on' box of each lot of said goods named in said service, and thereupon made his statement of what he supposed to be the value of said goods to the United States appraisers, and this statement was not revised or corrected by all or any of the United States appraisers, nor did all or any of the said principal United States appraisers make any decision thereon based upon an appraisal by all or any of said principal appraisers, nor report any such decision to Collector Bronson, and therefore there is no sufficient compliance with the provisions of law for imposing said additional duties or penalty.

62 Sixteenth. And, further protesting against the exaction of all or any part of said additional duty or penalty, we aver that only few boxes of said merchandise were designated by the collector or his deputy on the invoice to be opened and examined; and although the United States appraisers, or some or one of them, is alleged to have stated or reported that said goods in said four boxes were supposed to be invoiced at a low price, yet upon such alleged report the collector, Greene C. Bronson, did not forthwith order all of the said goods contained in said invoice and accompanying entry to be inspected, nor did said Greene C. Bronson, the then collector, thereupon cause said goods, which were dutiable ad valorum, to be appraised as required by S. 4, 1830, May 28, C. 147; S. 16 & 17, 1842, Aug. 30, C. 270; wherefore there was not made any appraisement of said goods sufficient in law to impose said additional duties or penalty.

Seventee'th. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that George W. Pomeroy, the appraiser at large, who acted as reappraiser of said goods, was not by law empowered to act as a reappraiser of these goods which were owned and manufactured by the Ystalyfera Iron Company, on whose account the importation was made, because the appraiser at large cannot act as a reappraiser except where goods imported have been actually purchased and an appeal has been taken under S. 17, act 1842, Aug. 30 (C. 270), from the appraisal of the United States appraisers on goods actually purchased; and therefore there is no sufficient compliance with the pro-

63 visions of said laws to impose said increase of duty or penalty.

Eighteenth. And, further protesting against the exaction of said increase of duties or penalty, we aver that the U. States appraisers, the reappraisers, and Collector G. C. Bronson, did not, nor did any of them, examine on oath the importers, owners, or consignees of said goods, nor any other person, in regard to the matters material to be known in ascertaining the true value of said goods, nor did all or any of said officers require the production on oath to any of them of the letters, accounts, and invoices in the possession of the consignees, or any other persons, relating to said goods; but on the contrary, although the consignees, Messrs. Naylor & Co., offered to give said appraisers, reappraisers, and collector, or to any of them, all the evidence relative to said goods which was material to be known, and to

produce to any of them all the letters, invoices, and accounts in the possession of the consignees relating to the said goods, yet the evidence, letters, accounts, and invoices material to be examined in ascertaining the value of said goods was not taken or received; and therefore there is no sufficient ground in law to exact said increased duties or penalty under S. 17, act 1842.

Nineteenth. And, further protesting against the exaction of all or any part of said increased duties or penalty, we aver that the United States appraisers did not, all or any of them, in fact examine and appraise the whole of said lot of goods; and therefore there is no sufficient com-
64 pliance with the provisions of law to impose said increase of duties or penalty.

Twentieth. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that the reappraisers did not, both or either of them, examine and appraise the whole of said lot of goods; and therefore there is no sufficient compliance with the provisions of law to impose said additional duties or penalty.

Twenty-first. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that after the United States appraisers, or some or one of them, had made a pretended appraisal of said goods, and after or before a written notice of dissatisfaction and demand of appraisal had been delivered to the collector by Maylor & Co., the consignees, the said United States appraisers, their assistant or clerk, or some or one of them, did select or nominate or appoint the said appraiser (Stokes) to act upon such appeal and to review the pretended appraisal of said United States appraisers; and said collector, Greene C. Brownson, did not in fact select, nominate, or appoint said Stokes to act as reappraiser, although by law said Bronson alone could select, nominate, and appoint said Stokes; therefore there has not been a compliance with the provisions of law sufficient to impose such additional duties or penalty.

Twenty-second. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that James
65 Stokes, the merchant who acted as reappraiser, was not legally qualified to act as reappraiser, in this, that his oath of office was administered to him by a person not authorized by law to administer the same, the power to administer such oaths having been vested by law in the collector of customs exclusively, and the oath of said Stokes not having been administered by Greene C. Bronson, the then collector, therefore there has been no compliance with the provisions of law sufficient to impose said additional duties or penalty.

Twenty-third. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that such goods were subject to specific duties under the act of 30' August, 1842 (c. 270, 5 S. U. S., p. 548), and under the act of 30' July, 1846 (ch. 74, 9 S. U. S., p. 43), were subjected to ad valorem duties; but in making the alleged appraisals and reappraisals of said goods per the Liddons reference was not had by the United States appraisers, the reappraisers, or the collector, or all or any of them, nor by every of them, to the values and invoices of similar goods imported during the fiscal year last preceding the 10th August, 1846, under the general and uniform regulations for the prevention of fraud or undervaluation prescribed by the Secretary of the Treas-

ury; therefore there has not been a compliance with said provisions of law sufficient to impose the said additional duties or penalty.

Twenty-fourth. And, further protesting against the exaction of said additional duty or penalty, we aver that such goods were subject to
66 specific duties under the act of the 30' August, 1842 (ch. 270, 5 Stat. at Large, p. 548), and under the act of 30' July, 1846 (ch. 74, Stat. at Large, p. 43), were subjected to ad valorem duties; but on making the alleged appraisals and reappraisals of such goods per the Liddons reference was not had by the United States appraisers, the reappraisers, or the collector, or all or any of them, nor by every of them, to the values and invoices of similar goods imported during the fiscal year last preceding the 29' August, 1853, under the general and uniform regulations for the prevention of fraud or undervaluation prescribed by the Secretary of the Treasury; therefore there has not been a compliance with said provisions of law sufficient to impose the said additional duties or penalty.

Twenty-fifth. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that the acts done in this case, whereon the alleged appraisal and reappraisals are supposed to be founded, are that W. Jackson, the clerk or assistant of the United States appraisers, inspected and examined, about the 31' August, 1853, one box of each lot of said goods, and reported to S. J. Willis, one of the appraisers, that he supposed it necessary to add three shillings sterling per box, less three per cent. discount, to make the value correct for said tin plates, and the said Willis reported this to the collection, and subsequently said Jackson, about the 12th September, 1853, reported to said Willis that he supposed there should be added three shillings per box, less three per cent., to make the value correct for tin and terne plates, and this
67 was reported to the collection by said Willis; that said tin and terne plates were not fully examined and appraised, and, as it is believed, not even in part examined and appraised, upon such report of said Jackson by said Willis or by the United States appraisers, all or any of them personally, but said statement of said Jackson was sent by said Willis to Greene C. Bronson, the then collector, without further examination; that upon written notice of dissatisfaction with said alleged appraisals, and appeal therefrom, the reappraisers who acted in the matter, both and each of them, examined only a small part of said lot of goods; that the price affixed to said goods by George W. Pomeroy, one of the alleged reappraisers, had reference solely to the values or prices given by Liverpool prices current as those quoted for goods of similar denomination, and had reference to actual sales of similar goods of the make of
68 Ystalyfera Iron Company or of like quality to the lot in question, and that the price placed upon said goods by James Stokes, the merchant who acted as reappraiser, had reference solely to the values that were usual at Liverpool at said date of shipment for goods of similar denomination but of better quality and more merchantable character, and therefore there is no compliance with the provisions of law sufficient to impose said additional duties or penalties.

Twenty-sixth. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver, and shall insist as matter of fact and law, that said goods were owned by the Ystalefera Iron Company; were manufactured by said owners; were invoiced by said owners at the fair actual wholesale cash value thereof at the time and place when

and where said goods were manufactured; were exported from Wales by the way of Liverpool to the United States; were not in fact equal in quality or merchantable value to similar merchandise made by other manufacturers; were fairly invoiced by said owners at a price which was not less by ten per cent. than the average price which they were fairly worth in sales at wholesale for cash in the several principal markets of Wales and England, and of each of said countries, exclusive of the charges of transportation from one market to another market of both or either of said countries; therefore there has been no infringement of the provisions of law whereby said additional duties or penalty can be imposed.

69 Twenty-seventh. And, further protesting against the exaction of all or any part of said additional duties or penalty, we aver that said goods were not in fact appraised by the United States appraiser', or any of them, according to the provisions of law, but in fact only a part of said goods were inspected by W. Jackson, the assistant or clerk of the appraisers, to whom said Jackson stated what he supposed to be the value thereof at the port of shipment, and by whom, or one of whom, the statement of said Jackson was signed and delivered to Greene C. Bronson, the then collector, as a statement of the supposed value of the part of said goods examined and inspected ( under S. 21, 1842, C. 270, Aug. 36) preliminary to as regular and full appraisal of said goods according to law; that said goods were not personally examined by the United States appraisers, nor by all or any of them; that said goods were not examined except in small part by the reappraisers, both or either of them; that said goods, being owned by the manufacturers thereof, should have been, but were not, appraised or reappraised in accordance with the provisions of the act of 1830, May 28, C. 147 (4 Stat. at Large, p. 409), at the price thereof where manufactured, by the U. States appraisers nor by two reappraisers, one selected by the importers and one by the collector; that said goods were in fact subjected to the pretended reappraisal of James Stokes, a merchant, who was not sworn into his office of reappraiser by Greene C. Bronson, the collector, by whom alone he could be legally sworn;

70 that the value of said goods were not in fact passed upon by said Bronson, then collector, nor appraised by him upon any examination or evidence relative to said value at and before he made his ac't as umpire between the said merchant reappraiser and the general appraiser; that Greene C. Bronson, the then collector, did not in fact estimate, value, or appraise said goods personally according to the value thereof in actual transactions in the chief markets of Wales and England, nor of either of said countries; that said goods were not in fact estimated, valued, or appraised by the U. States appraisers, the alleged reappraisers, and then Collector G. C. Bronson, nor by any of them, according to the value of such goods in actual transactions at wholesale for cash in the chief markets of Wales and England, nor of either of said countries; but all the alleged valuations of said goods were based solely on the quotations given in Liverpool prices, current for goods of the same denomination but of greater merchantability and better quality; that the value of said goods was assumed by the U. States appraisers, the reappraisers, and the collector without any reference having been made by them, or any of them, to invoices of similar goods imported during years ending on the 30' June, 1846, and 30' June, 1853, or in either of said years; that the alleged valuations by the U. States

appraisers, the reappraisers, and collector were made without any examination of the books, letters, papers, or documents relative to such imports and said goods of the importers, or any persons, by any of said
71 officers, as required by S. 17 of act 1842, Aug. 30; and therefore, under the facts aforesaid, there is no legal compliance with the provisions of the laws relating to such imports and their appraisal sufficient in law to impose the excessive duties or the penalty now demanded.

On all and each of which grounds together and separately above set forth we shall rely to protect the rights of the owners against the exaction of the illegal demands now made, and to recover damages for the same from yourself & the United States.

NAYLOR & CO., *Consignees, &*
THE YSTALIFERA IRON COMPANY, *Owner,*
By NAYLOR & CO.

72 SCHEDULE L.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Sep. 12, 1854 | John Bright | 90. 40 = 50 | | | | $134 10 | Dec. 11, '54. |
| " | Wm. Hitchcock | " | | | | 33 60 | |
| " | Bethoven | " | | | 582 20 | 194 40 | |
| Oct. 27, '56 | Jas. Nesmith | 30 | | | | 221 10 | |
| " | Garrick | " | | | | 6 30 | |
| " | Constitution | " | | | | 6 30 | |
| " | Garrick | " | 0 25 | | $39 30 | 1 21 | |
| " | Yorkshire | " | | | | 5 10 | |
| Nov. 2, '56 | Celle | 12. 0. 20 | | | | 20 40 | |
| " | Am. Eagle | | | | | 110 10 | 16, '54. |
| " | Ohio | 9 | | | | 80 40 | 29, '54. |
| Aug. 29, '54 | Southampton | 80. 0. 2 | | | | 3 60 | 11, '54. |
| Sep. 9, '54 | Robt. Kelly | 50 | | | | 6 60 | |
| " | Henry Reed | " | | | | 347 85 | |
| " | Wm. Rathbon | " | 5 00 | | | 1 00 | |
| " | Levitt Storer | " | | | $413 25 | 12 30 | |
| Dec. 10, '54 | Geo. Canning | | | | | 3 60 | |
| " | Ocean Herald | | | | | 48 50 | 16, '54. |
| Aug. 16, '54 | Robt. Kelly | 60 | | | | 99 30 | Sep. 4, '54. |
| " | do | " | 5 00 | | $260 90 | 96 90 | Dec. 11, '54. |
| " | Portland | " | | | | 240 90 | " " " |
| " | Presid't Smith | " | | | $357 60 | 275 70 | Sep. 7, '54. |
| " | Presid't Smith | " | 6 20 | | | 81 90 | 4, '54. |
| | | | $22 67 | | | $2,031 15 | |

(Schedule L.)

73 (Endorsed:) U. S. circuit court. The Ystalyfera Iron Co. against Herman J. Redfield. Case. John S. McCulloh, pl'ff's att'y, 35 William st., N. Y.

SIR: Take notice that the within is a copy of the case as made.
Dated , 1856.

JOHN S. McCULLOH,
*Pl'ff's Att'y.*

To JOHN MCKEON, Esq.,
*D'f"ts Att'y.*

Filed in court Jan'y 19, 1883, pursuant to order of same date. T.
6811——3

74 Circuit court of the United States for the southern district of New York.

THE YSTALIFERA IRON COMPANY
*v.*
COUSTANCE C. REDFIELD ET AL., EXECUTORS OF Herman J. Redfield, late collector.

SHIPMAN, *J.*:

The case shows that in 1853 the Ystalifera Iron Company, of Swansea, Wales, consigned, for its account and upon its risk, to Naylor & Co., of the city of New York, 1,300 boxes of tin and terne-plates, manufactured and owned by said iron company. Said goods were sent by way of Liverpool, and arrived by the ship Siddons about August 29th, 1853.

The invoice and entry contained four different kinds or brands of different values, viz, 600 boxes terne-plates, marked IC; 333 boxes IC tin plates; 137 boxes IX tin plates, and 200 boxes WIC tin plates.

75 The invoice was presented for entry at the custom-house on August 29th, 1853. The dutiable value was estimated upon the invoice valuation, being the value at the time and place of the manufacture of the goods, at $8,133.14, and the duties thereon were properly estimated to amount to $1,219.95, which were paid by Naylor & Co., without protest, on Sept'r 3d, 1853.

One box only of each mark or brand of the importation, being four boxes in all, were designated by the collector for examination and appraisal, and were removed to the public stores. A penal redelivery bond was given to the collector, as provided in 4 Stats. at Large, 410, sect. 4. A permit for 1,296 boxes was given to Naylor & Co., and they received these boxes between Sept. 10th, 1853, and Oct. 1, 1853.

The invoice valuation was raised more than ten per cent. by the Government appraiser on Sept. 12, 1853. Upon appeal by the consignees

76 there was a reappraisement on Sept. 14, 1853, by a merchant appraiser and the general appraiser. The former took the oath as required by law and examined only two or three of the sample boxes which were in the public stores; the general appraiser examined no more than the four sample boxes.

The two differed in the appraisal, the merchant appraiser increasing the invoice value somewhat, but less than ten per cent., and the general appraiser adhering to the previous appraisal. The collector decided in favor of the appraisement of the general appraiser. The reappraiser appeared at Liverpool, without reference to Swansea prices, and founded their opinion upon Liverpool prices current. The merchant appraiser deducted from the quotations in the circulars, because the value of the

77 Ystalifera goods at Liverpool was less than that which was given as the ordinary market price.

The increased duties in consequence of this appraisal were an additional duty of $140.70, and a penalty of $575, which were paid by the consignee's on Dec. 8th, 1854, under and after written protest distinctly and specifically setting forth the grounds of objections to the payment of the duties and under compulsion, partly in order to get the four boxes of plates upon which the duties were imposed, which were still in the public stores, and especially to prevent a permanent refusal by the custom-house official

to receive the bonds of their firm. There was no evidence of the waiver of the statutory requirement that one package in every ten packages in an invoice should be examined and appraised.

The decision by the reappraisers of the question what markets
78 of the country from which the goods have been imported are the principal ones for the goods in controversy, and their appraisal, made in accordance with the examination which is required by statute, are final. But the statute (5 Stats. at Large, 563, 565, sect's 16, 17, 21) require that one package in every ten packages of the merchandize to be appraised must be designated by the collector and must be examined, and there must be, in substance and effect, a faithful personal examination by the reappraisers of the number of packages which are required to be examined and appraised, or such an examination of the samples drawn from such packages as is equivalent to an examination of the packages themselves. If such examination is not had, the reappraisal is invalid, and the excess of duty or the penalty that is imposed by reason of any increased valuation
79 above those stated in the invoice, is illegally imposed. (Greeley v. Thompson, 10 How., 225; Greely's Adm'r v. Burgess, 18 How., 413; Burgess v. Converse, 2 Custis, 216; Stairs v. Peaslee, 18 How., 521; Belcher v. Luni, 24 How., 508.) If a faithful examination is not had of the number of packages which the statute required to be examined, or of the samples drawn from such number of packages, there was no power in the reappraisers to make an appraisal.

In this case but four packages, being one only of each of the four different brands of plates and the aggregate number of packages being 1,300, were sent to the public store for examination and were examined. Any examination of such packages only must be inadequate, unless further examination is waived.

The illegality is sufficiently pointed out in the 27th ground of
80 protest, taken in connection with the 16th ground; no objection was taken by the defendants to any defect in the protest.

Let judgment be entered upon the verdict for $715.70 with interest from Dec'r 8th, 1854.

A. W. Griswold for the plaintiff.
Hugh R. Willard asst. U. S. att'y for the def'ts.

(Endorsed:) U. S. circuit court, southern district of New York. The Ystalifera Iron Company versus Constance C. Redfield et al. executors, &c. Opinion. Elihu Root, United States attorney, attorney for defendants. U. S. circuit court. Filed April 30, 1883. Timothy Griffith, clerk.

81 Supreme Court of the United States.

CONSTANCE C. REDFIELD AND FRANK B. REDfield, executors, &c., plaintiffs in error,
*against*
THE YSTALYFERA IRON COMPANY, DEFENDANTS in error.

Afterwards, to wit, on the second Monday of October in the same term, before the justices of the said court, at the Capitol in Washington, came the

said plaintiffs in error, by Elihu Root, esq., their attorney, and say, that in the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendant in error, whereas, by the law of the land, the said judgment should have been given for the plaintiffs in error against the said defendant in error, and in this, to wit, that by the record aforesaid it appears that the case upon which the said judgment is based was settled and ordered on file by a judge of said circuit court who did not sit and was not present at the trial of the issues joined in said cause. And in this, to wit, that by the record aforesaid it appears
82 that the said defendant in error obtained a judgment for interest on the principal sum recovered from December 8th, 1854, whereas, by the law of the land, interest computed from that date should not have been allowed to said defendant in error, and in this to wit, that by the record aforesaid, it appears that the verdict by the jury aforesaid given was subject to adjustment at the custom house as to the amount, and that the judgment in favor of the defendant in error was entered without such adjustment being made.

And the said plaintiffs, in error pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs in error, may be restored to all things that they have lost by reason of said judgment, &c.

ELIHU ROOT,
*U. S. Attorney for Plaintiff in Error.*

83 (Endorsed:) U. S. Supreme Court. Constance C. Redfield & Frank B. Redfield, executors, &c., &c., of Herman J. Redfield, deceased, plaintiffs in error, versus The Ystalyfera Iron Company, defendant in error. Assignment of error. Elihu Root, United States attorney, attorney for plaintiffs in error.

Due service of a copy of the within is hereby admitted.
STEPHEN P. RUSSEL,
Per ALMON W. GRISWOLD, *Pl'ff's Att'y.*
NEW YORK, *October 9th*, 1883.
To A. W. GRISWOLD, *Attorney for Defendant in Error.*

U. S. circuit court. Filed Oct. 9, 1883. Timothy Griffith, clerk.

84 *Joinder in error.*

Supreme Court of the United States.

CONSTANCE C. REDFIELD AND FRANK B. REDfield, executors, &c., plaintiffs in error,
*against*
THE YSTALYFERA IRON COMPANY, DEFENDant in error.

And afterwards, to wit, on the second Monday of October, 1883, the said The Ystalyfera Iron Company, defendant in error, by A. W. Gris-

wold, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment, because it does not appear that any exceptions were taken by plaintiffs in error to any of the rulings or decisions complained of in plaintiffs' assignment of errors in said cause, and because in fact no bill of exceptions of any kind has been signed or allowed by the court.

85 And defendant in error prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

ALMON W. GRISWOLD,
*Att'y for Defendant in Error.*

(Endorsed:) U. S. Supreme Court. Constance C. Redfield et al., executors, &c., pl'ffs in error, vs. The Ystalyfera Iron Co., def't in error. Joinder in error. A. W. Griswold, att'y for def't in error, 155 Broadway, New York.

86 Due service of a copy of within joinder in error is hereby admitted, dated Oct. 9, 1883.

ELIHU ROOT,
*U. S. Attorney, Att'y for Plaintiffs in Error.*

U. S. circuit court. Filed Oct. 9, 1883. Timothy Griffith, clerk.

87 United States circuit court, southern district of New York.

THE YSTALYFERA IRON COMPANY
*vs.*
CONSTANCE C. REDFIELD & FRANK B. REDfield, executors, &c., &c.

It being understood that the defendant proposes to take this case to the Supreme Court of the United States on a writ of error, I consent that such writ may be made returnable at the first day of the next term of said court, and agree to accept service of citation thereon if made on or before the 6th instant, as of thirty (30) days before the opening of the next term of said Supreme Court.

Dated New York, October 3rd, 1883.

S. P. RUSSEL,
*Attorney for Plaintiff,*
Per A. W. GRISWOLD,
*Of Counsel.*

88 (Endorsed:) U. S. circuit court, southern district of New York. The Ystalyfera Iron Company versus C. C. Redfield & Frank B. Redfield, ex'rs, &c. Plaintiff's agreement as to time to take the case to the Supreme Court of the United States. Elihu Root, United States attorney, attorney for defendant.

Due service of a copy of the within is hereby admitted.
New York, October 3, 1883.

S. P. RUSSELL,
*Attorney for Plaintiff.*
Per A. W. GRISWOLD,
*of Counsel.*

To A. W. GRISWOLD, Esq., *Attorney for Plaintiff.*

U. S. circuit court. Filed Oct. 3, 1883. Timothy Griffith, clerk.

89 UNITED STATES OF AMERICA, *ss.:*

To the Ystalyfera Iron Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-three, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Constance C. Redfield and Frank B. Redfield, executors, &c., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated, New York, October 3rd, 1883.

ADDISON BROWN.

90 (Indorsed:) U. S. Supreme Court. Constance C. Redfield & Frank B. Redfield, executors, &c., plaintiffs in error, against The Ystalyfera Iron Company, defendant in error. Citation.

Due service of a copy of the within citation is hereby admitted this 3rd of October, 1883.

ALMON W. GRISWOLD,
*Pff's Att'y.*

A. H.

U. S. circuit court. Filed Oct. 3, 1883. Timothy Griffith, clerk.

(Indorsement on cover:) No. 1145. Constance C. Redfield and Frank B. Redfield, executrix and executor of Herman J. Redfield, deceased, late collector of the port of New York, plaintiffs in error, vs. The Ystalyfera Iron Company. S. New York C. C. U. S. Filed 12th October, 1883.

110-174

OFFICE SUPREME COURT U.S.
FILED
JAN 2 1884
JAMES H. McKENNEY, Clerk.

# In the Supreme Court of the United States.

OCTOBER TERM, 1883.

REDFIELD, &c.,
*vs.*
YSTALYFERA COMPANY. } No. 1143.

BRIEF FOR THE PLAINTIFF IN ERROR.

# In the Supreme Court of the United States.

OCTOBER TERM, 1883.

REDFIELD, &c.,
*vs.*
YSTALYFERA COMPANY. } No. 1143.

BRIEF FOR THE PLAINTIFF IN ERROR.

This record presents circumstances that are unusual.

The action was begun in the year 1854 against a collector to recover excessive duties levied upon an importation of tin and terne plates; and, in December, 1856, "by direction of the court and consent of counsel," a verdict was found for the plaintiff for $1,500, "subject to the opinion of the court upon a case to be made, with liberty to turn this into a bill of exceptions, and subject to adjustment at the custom-house as to the amount." (Folio 10.)

In January, 1859, the "case" in the record was served upon the United States attorney. (Folio 12.)

Nothing more was done in the suit until June, 1882,

when, by consent of counsel, the executors of the collector were substituted as defendants. (Folio 11.)

The next step was a motion, and order, in January, 1883, that the *case* served "upon the United States attorney in January, 1857, and now in his possession, be considered as having been then agreed upon and settled between the parties; and be now filed as part of the records in this case." (Folio 12.)

Thereupon, in April, 1883, judgment was given upon the verdict, for $715.70, with interest from December 8, 1854 (amounting on the 22d of August, 1883, to $2,128.16), and costs. (Folios 13 and 15.)

I submit that the proceedings taken in this case within the present year are fairly subject to the remark that, considering that since 1857 there have been probably eight or ten successive United States attorneys at New York, whilst one of the original attorneys for the importers (Mr. Russell) has survived all these changes (folios 8 and 11), a great *preponderance* (at least) of *negligence* by inaction upon a favorable verdict and a case served during twenty-six years rests upon the importers. In the nature of things *they* were advertent to the claim, and in the course of the action were apparently upon the very eve of securing their *damages*. They had a favorable verdict, and a *case* containing their own view of the proceedings in court. Under such circumstances their inaction impresses one as remarkable, and, wholly unexplained as it is upon the record, as calculated to suggest that they would be benefited by the obscurity with which the lapse of almost a generation would necessarily veil difficulties to which the verdict at that time might have been embarrassed.

These remarks seem to be pertinent even in a court of error. There may have been technical laches in the successive United States attorneys, each of whom may have been in duty bound to respond to the "case" served, although never actually called to his attention; but under the above circumstances the neglect of the importers to take a rule upon these officers, one or other, in order to speed their own "perception" of damages, which were almost in their very hands, makes this a case for narrowly *scanning* the judgment and the record upon which it rests.

Under the circumstances it seems that "an adjustment at the custom-house," as stipulated for in the verdict, is immaterial, and therefore no exception is taken here to an ascertainment by the court.

For *error* is assigned—

1. The decision that an examination by the appraisers of *one package in ten* was, in the circumstances of this case, necessary to the validity of a valuation of the goods.

2. The rendering judgment for an amount in excess of the verdict.

1. The articles upon which the duties were exacted were tin and terne plates (1,300 boxes).

The question between the importers and the customs' officers appears to have been whether these should have been valued at the prices prevailing at *Liverpool*, whence they were exported, or at those of *Swansea*, where they

were manufactured; and also as to the general value of a brand of tin and terne plates made by the plaintiffs below; *i. e.*, of the Ystalyfera brand.

The increase by the appraisers of the valuation at which the tin, &c., had been invoiced was occasioned by no judgment formed upon the quality of the goods, further than as arising from its origin (Ystalyfera), but from the conclusion of the assessors that *Liverpool* rather than *Swansea* was to give the rule. Their action upon this point is thus summed up by the learned court below:

> "The reappraisers appraised at Liverpool, without reference to Swansea prices, and founded their opinion upon Liverpool prices current. The merchant appraiser deducted from the quotations in the circulars, because the value of the Ystalyfera goods at Liverpool was less than that which was given as the ordinary market price." (Folio 76.)

The opinion proceeds:

> "The decision by the reappraisers of the question what markets of the country from which the goods have been imported are the principal ones for the goods in controversy, and their appraisal, made in accordance with the examination which is required by statute, are final. But the statute (5 Stats. L. 563, 565, sections 16, 17, 21) requires that one package in every ten packages of merchandise to be appraised must be designated by the collector and must be examined," &c.

It is to be admitted that the statute of 1842, above alluded to (Rev. Stat., sec. 2901), does require that in a case like the present, at least one in ten packages is to be *designated* and *examined*. It seems, also, that in general, a

failure to designate and examine that proportion is fatal to an appraisement.

*I submit that this effect is confined to cases where such examination has affected or might affect the appraisal; that is, where such appraisal has turned upon an element in the quality of such goods, discerned or discernible by examination. And that where the appraisement turns upon facts that are admitted by the parties thereto the above provision (as to one package in ten, &c.), is immaterial.*

There is no doubt here that the goods were of *Ystalyfera* manufacture, made at *Swansea* and shipped at *Liverpool*. No amount of examination could have changed these circumstances. The contention before the appraisers was as to the extent to which these elements properly affected the appraisement.

It seems, therefore, that the circumstance that the appraisers had not taken due means to inform themselves *as to another element* not in dispute, and not decided (viz, the actual condition of the goods), is immaterial.

2. In any event the judgment cannot exceed the verdict, and therefore should have been limited for $1,500 or less.

The laches of the defendants in error is such that the court will not interfere to relieve them of its consequences, even supposing that *interference* were competent in a case like the present.

S. F. PHILLIPS,
*Solicitor-General.*

110-174

IN THE

# Supreme Court of the United States.

| | |
|---|---|
| CONSTANCE C. REDFIELD, et. al., Executors, &c., *Plaintiffs in Error,* *vs.,* THE YSTALYFERA IRON CO. | Oct. Term, 1883. No. 1143. |

## BRIEF FOR DEFENDANT IN ERROR.

James L. Black, Law Printer, 57 College Place, N. Y.

IN THE

# Supreme Court of the United States.

| | |
|---|---|
| CONSTANCE C. REDFIELD, et. al., Executors, &c., *Plaintiffs in Error*, *vs.*, THE YSTALYFERA IRON CO. | Oct. Term, 1883, No. 1143. |

Error to the Circuit Court of the U. S. for the Southern District of New York.

## BRIEF FOR DEFENDANT IN ERROR.

The record is indeed an extraordinary, and for reasons *other* than those of *delay*.

1*st*.—It discloses *no bill of exceptions*, though the verdict provided that the *case* which was made and served, might be turned into one, by either party.

2*nd*—*Nor an agreed Statement of Facts.*

3*rd*—*Nor a Special Verdict.*

4*th*—*Nor any error apparent on the face of the Record*, and

5*th*—Because even the errors assigned in the record by the attorney of the Plaintiffs in Error, folio 82, are all abandoned by the Solicitor General.

And here counsel for defendant in error desires to state that he appreciates, and returns thanks to the Solicitor General, for his courtesy in promptly consenting to submit this case, at the first term, on printed arguments.

This action was commenced in 1854, to recover $140.70 excess of duty, and $575.00 penalty, making $715.70, on an importation of tin and terne plates consigned to Naylor & Co. (folio 41) do folio 45.

The cause was tried on December 16, 1856, and a verdict taken for plaintiffs, by consent of counsel and direction of the court, subject to the opinion of the Court on a *case* to be made, with liberty to either party to turn the same into a bill of exceptions. (Folio 10.)

The record shows that on January 17th, 1883, it was made apparent to the Court below, that in January, 1857, a month after the trial and verdict Dec. 16th, 1856, a *copy* of the *case*, made in pursuance of that verdict, was served on the U. S. District Attorney, and was considered as having been there agreed upon and settled between the parties. (Folio 12.)

*As to the causes of delay.*

All the *evidence* having been marshaled in that case—made and served in accordance with the terms of the verdict, the only question to be passed upon by the Court was simply one of *law* upon the record of evidence presented by that *case*, and either party was at liberty to notice the cause and press it for argument, upon that case, and so far as the record here shows, one party is as much responsible for the delay as the other, and no more.

The *evidence* having been garnered into a *case*, and so settled beyond controversy, in January, 1857, the defendant in error fails to appreciate any motive for delay on his part, or advantage to be derived "from lapse of time."

The learned Solicitor General suggests that plaintiffs "*inaction impresses one as remarkable and wholly unex-*
"*plained, as it is, upon the record, as calculated to suggest*
"*that they would be benefited by the obscurity with which*
"*the lapse of almost a generation would necessarily veil*
"*difficulties bywhich the verdict at that time might have*
"*been embarrassed.*"

Of course, the "causes of delay are unexplained on the record." What has this Court to do with the delay in bringing a cause to argument in the Court below? Considerations for *delay* are addressed to the *discretion* of the court. Experience shows that they are numerous. What may seem to the *Court* good cause for delay, may appear to a *party* insufficient, but such questions do not come to this Court for review. Hence, the record in this case is mute on that subject.

The learned counsel also seems not to comprehend the fact that the *verdict* was in no immediate danger of *embarrassment* from any *difficulties*, except such as were *recorded in that settled case* which had been served on the defendant's attorney in 1857, and found still in his possession in 1883. (Folio 12.)

All the *evidence* on which that verdict was rendered had been moulded into that *case*—had become the record of the Court below, which time could not change or the vecissitudes of successive U. S. attorneys complicate or *embarrass.* Has not this Court in its experience, for good cause, passed cases year after year, without solicitude as to the sanctity of the record.

There were in fact two causes of delay, about equally divided between plaintiffs and defendant, as counsel is informed, and as the papers showed in the Court below, and they seemed entirely satisfactory to that Court.

Counsel would be glad to show aliunde what those causes were, but it would be travelling out of the record and improper. Defendant's counsel therefore dismisses

the subject with the single suggestion that it may be within the recollection of the learned judge from the second circuit, that some two years since it was made to appear in proceedings in certain other cases in which John S. McCalloh, Esq. was also attorney for the plaintiffs, that in consequence of the loss of sight he had been compelled to abandon practice, and had moved to the interior of Maryland, some eighteen years ago.

I

No bill of exceptions having been allowed, this Court will not review the decision of the Court below, or examine into any of the errors assigned, unless they are apparent on the record.

Storm v. U. S., 4 Otto, 76.
Kerr v. Chunpitt, 5 ibid., 189.
Suydam v. Williamson, 20 Howard, 433,

(*a*). The *case*, which was made and served in January, 1857, in accordance with the terms of the verdict, in the Court below (folio 12), and which is printed in the record between folios 16 and 74, is entitled to no place there as a part of the record.

Suydam v. Williamson, super.

(*b*). It cannot be treated as an agreed statement of facts, because it is not such, it is simply a report of the testimony. Ibid.

(*c*). By the terms of the verdict either party was at liberty to turn the *case* into a bill of exceptions (folio 10), and the plaintiffs in error having neglected to avail of this option, it is now too late. Ibid.

Suydam v. Williamson, is directly in point. A verdict was taken for plaintiff by direction of the Court, subject to the opinion of the Court, upon the question of law on a case to be made, "*with liberty to either party to turn "that case into a special verdict, or bill of exceptions,*" as in the case at bar, which was not done.

The Court said, "we regret that the facts of the case, and the ruling of the Court below, are not now exhibited in a manner to justify this Court in giving the subject a re-examintion, with the aid of the additional light which has been thrown upon it by the elaborate and very able discussion at the bar. * * * * The difficulty, however, in the way of such an examination at this time, is insurmountable, for the reason that the record does not contain either a bill of exceptions, special verdict, or an agreed statement of facts. * * * * Every special verdict, in order to enable the Appellate Court to act upon it, must find the facts, and not merely state the evidence of facts, so that where it states the evidence merely, without stating the conclusions of the jury, a court of error cannot act upon matters so found."

The Court, in further commenting on the neglect of the plaintiff in error to avail of his right to turn the case into a special verdict or bill of exceptions says:

"Whatever might have been the right of the parties under that report, it is too plain for argument, that no one connected with its preparation could have regarded it either as a special verdict or a bill of exceptions. All that it proposed to do was to give either party the liberty to turn the case into one or the other of those forms of proceeding; and it is a sufficient answer to any pretentions under the report to say that the change has not been made. That, for some reason unknown to this Court, the right to make the change, if such it was, has never been exercised; and that it is now presented here, in the form in which it was prepared, when it is too late to make the alteration. And we also say that this Court

cannot so far depart from the settled practice and regular course of proceedings as to give an effect to the paper, which neither its contents nor terms would warrant; nor can we attempt to do for the plaintiff in error what it was his duty to have done at the trial, and before the writ of error was sued out."

Under the New York Code of Civil Procedure the practice is also well defined, and is as follows:

"§ 1185. (Amended 1879). Verdict subject to the opinion of the Court.

Where, upon the trial of an issue by a jury, the case presents only questions of law, the judge may direct the jury to render a verdict, subject to the opinion of the Court. Notwithstanding that such a verdict has been rendered, the judge holding the trial term may, at the same term, set aside the verdict, and direct judgment to be entered for either party, with like effect, and in like manner, as if such a direction had been given at the trial. An exception to such a direction may be taken as prescribed in section nine hundred and ninety-four of this act."

"§ 944. Exceptions after close of trial by Court or Referee.

Where an issue of fact is tried by a referee, or by the Court, without a jury, an exception to a ruling upon a question of law, made after the cause is finally submitted, must be taken, by filing a notice of exception in the clerk's office, and serving a copy thereof upon the attorney for the adverse party. The exception may be so taken at any time before the expiration of ten days after service, upon the attorney for the exceptant, of a copy of the decision of the Court, or report of the referee, and a written notice of the entry of judgment thereupon, If the notice of exception is filed before the entry of final judment, it must be inserted in the judgment roll; if afterwards, it must be annexed to the judgment roll.

In either case it constitutes a part of the papers upon which an appeal from the judgment must be heard."

The fact, that no exception was taken to the decision of the Court below, although more than three months intervened between the date of the entry of the *order* for judgment, on the judge's decision, April 30, 1883, folio 13, and the date of entry of *Judgment*, August 22, 1883, folio 15, shows that the defendants below were satisfied with the rulings and decision of that Court.

## II.

There are no errors apparent on the record.

(*a*) This Court will assume that the adjustment of the amount was made at the Custom House, in accordance with the terms of the verdict, or that the amount being apparent on the record, such adjustment was waived. Folio 27, do 41, do 45.

The judgment of the Court below is assumed to be correct till the contrary is made to appear. It is not sufficient to produce a record from which it does not appear, whether it is right or wrong.

Simpson vs. Baker, 2 Black, 581.

(*b*) This point is waived by the Solicitor-General.

Even if the Court should hold that the *case*, as made and served in the Court below, in January, 1857, and which has been sent up here and printed in the record, may be treated by this Court as a quasi statement of facts on which this court can review and revise the de-

cision of the Court below, none of the rulings or decisions upon any of the questions presented by that case, were assigned for error in this Court, as the record shows. Folio 81—85.

## III.

The appraisement by the U. S. local appraiser, and the re-appraisement by the U. S. General and Merchant Appraisers, as well as the decision made by Mr. Bronson, as Collector, are illegal and void, because:

(*a.*) The Collector neglected to designate on the invoice one package in ten of the goods *to be sent*, and one package in ten was *not* in fact sent to the public store for examination and appraisement, as required by law.

See act of 1830, § 4, 4 Stat. at L., 410.
See act of 1842, § 21, 5 Stat. at L., 565.
See oath of Mercht. Appraiser Stokes, Schedule B., p. 33.
See act, 1823, § 16, 3 Stat. at L., 735.

(*b*). The appraisement was made without an examination of one package in ten of the invoice quantity of the terne and tin plates, and the examination, which was made of only *four* boxes out of 1,300, was not, under the circumstances, equivalent to such an examination. Pritchard says, folio 30: "The plates were of *uncertain quality—different sheets in the same box, varied as to flexibility and brittleness*," and Williamson says same, folio 31,—hence the necessity of a strict compliance with the law.

Greely v. Thompson, 10 How., 238--9.
Burgess v. Converse, 2 Curtis, 222.
Converse, Adm. of Greeley v. Burgess, 18 How., 416.

The Court, in Greely v. Thompson, after referring to the Statutes requiring an examination by the appraisers, said:

"Those acts expressly require that the appraisers should inspect or examine a portion of the goods pointed out by the collector. * * * * "The oaths administered to them are, diligently and faithfully to examine the goods, &c. * * In this very case the appraisers swore "diligently and faithfully to examine and inspect said lot of railroad iron," and reported that "we have examined" it, &c., when the record states that one of the merchant appraisers "never saw the iron," and one of the permanent appraisers did not examine and did not inspect or see the iron."

* * "It would be unreasonable to overturn the invoices and oaths of importers, unless by a personal inspection and examination. An insufficient valne should clearly appear to have been affixed, considering the *quality* of the article first, and next the market value abroad of articles of that quality, and at the time required by law."

And in the case of Greely's administrator v. Burgess, 18 How., 416, the Court said:

"It is the duty of the collector to designate on the invoice at least one package of every invoice, and one package at least of every ten packages of goods, wares and merchandise, and a greater number should he or either of the appraisers deem it necessary to be opened, examined and appraised, and shall order the package or packages so designated to the public store for examination. 5 Stats. at Large, 563--565, §§ 16, 17, 21. The appraisers, take an oath diligently and faithfully to examine and inspect such goods, wares and merchandise as the collector may direct, and truely to report to the best of their knowledge and belief, the true value thereof. 3 Stat. at Large, 735, § 16.

These acts of Congress provide for the appointment,

regulate the duties, and impose the limitations on the authority of the appraisers, and determine the conditions on which the validity of their assessment depends. All their powers are derived from these acts, and it is their duty to observe the restrictions and obey the directions they contain."

Applying to the case at bar, the rule laid down by the Supreme Court in the cases above cited, the appraisement made herein upon an examination of only four out of 1300 boxes, of four different qualities and brands of plates, must be held to be fatally defective—wholly insufficient to justify the subversion of the plaintiff's invoice.

The heedlessness, the total disregard of the requirements of the law on the part of the collector, in neglecting to order the proper quantity of the plates for appraisement, and the appraisers in neglecting to make the proper examination on appraisement, show a degree of carelessness bordering closely upon recklessness.

1st.—The collector did not, as the law requires, on entry of the tin and terne plates, order any of the packages to be sent to the public store for appraisement, but simply said on the invoice:

"Report value,"

"C. P. Clinch, D. C." See Sched. A, folio 37.

The original appraisement by the local appraisers was made without seeing any of the goods, but the appraiser had before him the Liverpool circulars or prices current; see Jackson's testimony, folio 32.

This was a flagrant violation of the requirements of the law by the collector and appraiser.

2d.—When a reappraisement was called for by Messrs. Naylor & Co., the defendant's consignees, the collector *then* ordered *one* box of each brand—not one in *ten*, as the law required—to be sent to the public store for

appraisement, and *then* the local appraiser went through the formality of making another report, dated Sept. 12, 1853, but without changing his figures. See Jackson's testimony, folio 32.

3d.—The merchant-appraiser, Mr. Stokes, took an oath on Sep. 13th, 1853, diligently and faithfully to examine and inspect said lot of tin and terne plates, etc., Sched. B., folio 38, and he says he saw *one box* of each brand; that he did not consider these plates as good as those marked "Charcoal;" that there are various qualities of "tin and terne plates;" these are marked "Anthracite," in the invoice—the lowest grade of all makes, and yet this same merchant appraiser has signed a report, folio 39, which says: "We have examined '*Charcoal* tin and terne plates,' imported by Naylor & Co., etc., etc., and go on and value "600 boxes terne *charcoal* plates, 333 boxes of tin plates," etc., etc., and yet this same merchant-appraiser subsequently tells you, under oath, what the invoice on its face also shows, that these tin and terne plates were not "charcoal plates," as this report of the appraisers describes them to be,—are not even "Coke-plates," but are "Anthracite," the lowest grade or quality of plates manufactured. "There are various qualities of tin and terne plates," says Mr. Stokes, folio 28.

How are those qualities to be ascertained, except by the examination prescribed by law? Can any further evidence be required to show the utter recklessness and disregard of those requirements on the part of the collector, and both the local and the merchant-appraisers? Such an appraisement should not be upheld by this Court. Such a violation of the statutes should not be sanctioned.

There is no tribunal created by State or National laws with such power as are conferred on appraisers of imported merchandise. Their discretion is unlimted, no matter how gross the error of judgment may be, the importer must submit to it; there is no escape,

*provided*, in making their appraisement, they have complied with the *formalities*,—the requirements of the statute.

These formalities—these requirements—are for the protection of the importer, as well as the government, and the Courts will see to it that the importer is not mulcted in excessive duties and penalties, unless these requirements have been complied with.

The decision of the Court below was right, or those of this Court above cited are all wrong.

## IV.

The point made by plaintiffs in error, that the judgment cannot exceed the verdict, is wholly untenable.

The amount of damages claimed in the original summons and complaint in the State Court was $3,000, folio 4, and the same amount is claimed in the declaration in the U. S. Circuit Court, folio 8.

The sum mentioned in the verdict was not intended nor understood to limit the amount to be recovered, if anything. The taking of this verdict was a mere formality; it was taken subject to the opinion of the Court, whose findings, notwithstanding the verdict, might be for the defendant below, and it is the *finding,—the decision of the Court below*, upon the case made persuant to that verdict, and the judgment entered upon that decision, with which this Court has now to deal. There is no pretense that $715.70, the sum found by the court to have been over paid on December 8th, 1854, was not the correct amount.

The Court announced its decisionon April 30th, 1883, folio 13. Judgment was entered upon, and in accordance

with this decision, August 22d, 1883, folio 15, without objection or exception, and the record does not even assign error in such decision. The objection is presented for the first time in *this* Court. Under these circumstances, even if there was error, it must be held to have been waived by the plaintiffs in error in the Court below, and they are concluded by that waiver in this Court.

Railroad Co. v. Lindsay, 4 Wall, 650.

Computation of interest was in conformity with the laws of New York. See Code Civil Procedure § 1235.

"§ 1235. Interest in verdict, etc., to be included in recovery.

Where judgment is rendered for a sum of money awarded by a verdict, report or *decision*, interest upon the same awarded, from the time when the verdict was rendered, or the report or *decision* was made, to the time of entering judgment, must be computed by the clerk, added to the sum awarded, included in the amount of the judgment."

The judgment of the Court below should be affirmed.

A. W. GRISWOLD,
of Counsel for Defendant in Error.

110-174

# In the Supreme Court of the United States.

OCTOBER TERM, 1883.

REDFIELD, EXTRX., &c., v. THE YSTALYFERA CO. } No. 1143.

## BRIEF FOR THE PLAINTIFFS IN ERROR IN REPLY.

I. The circumstances attending Suydam *v.* Williamson, 20 How., 433, cited for the defendant in error, differ from those of this case, and, as it seems, materially. Whether they do so *essentially* need not be pressed here, because, waiving that point, it is submitted that there is clear error in the amount of the judgment, for———

II. The quotation from the New York code (upon page 13 of the brief of the learned counsel) has no application here, for the present is a regular action in *assumpsit* (folio 7), and is governed by the rules of procedure of United States courts prevailing in 1855–'56, &c.

The well-known judgment in that form of action is that "the plaintiff recover his said damages (&c.) by the persons aforesaid in form aforesaid assessed (&c.); which said

damages and charges in the whole amount to $———." Arch. Appendix, 142.

The question here is not whether a judgment carries interest from its rendition, but whether in the absence of statutory provision to that effect it can give interest by relation from the date of the verdict, the circumstances here being, as is submitted, unfavorable to any *modification* of former doctrines upon the subject.

That it cannot, see Shepherd *v.* Brenton, 20 Iowa, 42; Atherton *v.* Fowler, 46 Cal., 323; Pawling *v.* Sartin, 4 J. J. Marsh, 538; Bleckerstaff *v.* Perrin, 27 Ind., 527.

Notwithstanding what is urged to the contrary by the learned counsel, it seems that the proposition that entries of verdicts and judgments are necessarily parts of the *record* is *elementary*.

S. F. PHILLIPS,
*Solicitor-General.*

110-174

Office Supreme Court U. S.
FILED.
APR 25 1884
JAMES. H. McKENNEY.
CLERK.

# Supreme Court

## OF THE UNITED STATES.

OCTOBER TERM, 1883.

REDFIELD,
*vs.*
YSTALYFERA IRON COMPANY.

No. 1143.

**Brief for Defendant in error, in Reply to that of Plaintiff in error.**

FIRST.

As to the delay in making this motion:

Counsel for defendant in error first came into the case, and as counsel only, in 1881, and was not familiar with its history.

Mr. S. P. Russel, who had been the *attorney* of record since 1868 or 1869, and who was familiar with it, died last December, before this question arose.

Mr. McColloh, the original attorney, who retired from it sixteen years ago, a blind man, living more than two hundred miles away, in the interior of Maryland, was not at hand to be advised with. And it has taken time to get these facts together, so as to present them to the Court.

SECOND.

The plaintiff in error was *alone* responsible for the first fourteen years' delay in the prosecution of this suit.

Mr. McKeon, the United States Attorney, was the primary cause. He carried away from the United States District Attorney's office, on his retirement from it in December, 1857, the docket or register covering this case, all the papers, and the *case* itself, leaving no record of it in that office. See Exhibits A, B, C and E.

About a year subsequently, in November, 1858, he substituted Theo. Sedgwick his successor, and turned over the papers and *case* to him who shortly after died.

His successor very probably found these papers in his office, but, as there was no *record* of any such case in the *dockets* of the office to which these papers could refer, they were cast aside as of no consequence. See Exhibit E.

After ten years' delay, the defendant in error, in the hope of getting his case heard, made and served a *duplicate copy* of it on the United States Attorney. See Exhibits B and C.

And, even after that, though he had duplicate copies of the case in his possession, the United States Attorney was unwilling to act in it, because no *record* of it was found in the *dockets* of his office, and refused a copy to the defendant in error, who had served him with two copies. See Woodford's Letter, Exhibit E.

THIRD.

But, it is said, these facts do not appear in the record. True, they do not—how could they? No such question was raised in the Court below, and the defendant in error is unable to understand how, under such circumstances, the facts touching this delay could have been spread upon the record.

Nearly four months intervened between the date of the finding of the Court, April 30th, 1883, and August 22d, 1883, when judgment was entered, during which

the defendant below could have raised this question, and had it passed upon, but did not. And when his writ of error came up here with a record, showing no exception on this point, or bill of exceptions of any kind, the learned Solicitor General, though he did raise a number of points in his original brief, it did not occur to him to raise *this one.*

What the learned Solicitor General contended for so stoutly, was, that the defendant in error was limited in his recovery of *principal and interest* to the $1,500 mentioned in the verdict.

It was this Court which raised the point *of its own motion,* and, while the defendant in error does not question the soundness of the decision in case of *actual laches,* and does not ask this Court to pass upon the question of fact presented by these affidavits and papers, it is within its discretion to refer it back to the Court below, to investigate and pass upon. And thinks that, in furtherance of justice, that course ought to be taken.

There are pending in the Circuit Court for the Southern District of New York, a batch of some thirty cases commenced twenty years ago, all involving two issues; one of these issues has been tried, and the decision for plaintiffs in the Court below affirmed by this Court, some time since.

The other issue has been tried in a single case four times in the Circuit Court during the twenty years as follows:

1st Trial. Verdict for defendant — afterwards set aside and new trial ordered.

2d Trial. Verdict for plaintiff—exceptions.

On writ of error to this Court, judgment reversed and new trial ordered.

3d Trial. Verdict for defendant. Subsequently this verdict was set aside and new trial ordered.

4th Trial. Verdict for defendant—exceptions.

Writ of error brought the case to this Court three years ago, for the *second time*, where it is still pending. And, before it can be reached and disposed of, twenty-two years will have elapsed since suits in this and the above mentioned batch of cases were commenced, and seven years of that time will have been consumed by this Court in twice considering and passing on the questions of law presented in the case; and yet the record of that case does not show that there was ever but one trial below, or that it was ever before in this Court.

Now, which ever way the Supreme Court may decide the issue now pending in the case here, when it is decided, the plaintiffs will be allowed to take judgment in the thirty cases, because the first issue was decided in their favor by this Court in another case long ago, but they have had no means of getting their money, because the other issue was still pending.

Assuming that other issue to be determined by the decision of the Supreme Court, and plaintiffs proceed to enter up their judgments in the above thirty cases, the judgment rolls—the records would not show the causes of delay. Although it would be known to and understood by the Court below, that they had been awaiting the decision of a case in this Court, there is no record, or entry on the docket to that effect, so that when judgments shall be perfected, the records will show no reason, no excuse for the twenty-two years' delay, and, unless some method can be adopted by the Court, by which, preliminary to an entry of judgment, a plaintiff may be allowed to show and have spread upon the record the causes of delay, so as to negative the presumprion of *laches*, his judgment will be liable to be reversed in this Court, as has been that of Redfield *vs.* the Ystalyfera Iron Co.

The point is a new one in practice—certainly in the Federal Courts. And the question, *how* a plaintiff may be permitted to show the causes of delay in order to negative a presumption of *laches*—no such question

being raised by the defendant—is already occupying the attention of counsel and Court in other cases, and is not entirely free from embarrassment.

The Court, in remanding this case to the Circuit, could so frame its order as to relieve this case of a part of its hardship on defendant in error, and at the same time indicate a course to guide the profession in like cases.

ALMON W. GRISWOLD,

*Counsel for Def't in Error.*